

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
TOM OGNIBENE, *et al.*,

Plaintiffs,

- against -

**DECLARATION OF  
JONATHAN PINES**

FREDERICK A. O. SCHWARTZ, JR., *et al.*,

08 CV 01335 (LTS) (TDK)

Defendants.

----- X

**JONATHAN PINES**, an attorney duly admitted to practice law declares under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am an Assistant Corporation Counsel in the Office of the Corporation Counsel, assigned to represent the defendants in this matter.

2. I make this declaration in opposition to plaintiffs' motion for a preliminary injunction and in support of defendants' cross-motion for summary judgment.

3. Attached to this declaration as Pines Exhibit A is the official text of Local Law 34, approved on July 3, 2007.

4. Attached to this declaration as Pines Exhibit B is the official text of Local Law 67, approved on December 31, 2007.

5. Attached to this declaration as Pines Exhibit C is the official text of Local Law 15, approved on June 13, 2006.

6. Attached to this declaration as Pines Exhibit D is the official text of Local Law 16, approved on June 13, 2006.

7. Attached to this declaration as Pines Exhibit E is the official text of Local Law 17, approved on June 13, 2006.

8. Attached to this declaration as Pines Exhibit F is the Report of the New York City Charter Revision Commission, dated August 20, 1998.

9. Attached to this declaration as Pines Exhibit G is the full text of Int. No. 586. Legislation pending in the Council is called an "Introduction," often abbreviated to "Intro" or "Int.", and is assigned a number. When an Introduction is signed by the Mayor, it becomes a Local Law and is assigned a new number. See City Council webpage at <http://www.council.nyc.gov/html/about/about.shtml> (last visited on August 4, 2008).

10. Attached to this declaration as Pines Exhibit H is the Report of the Governmental Affairs Division on Int. No. 586.

11. Attached to this declaration as Pines Exhibit I is the Transcript of the Minutes of the Committee on Governmental Operations regarding Int. No. 586, dated June 12, 2007.

12. Attached to this declaration as Pines Exhibit J is the written testimony submitted to the City Council regarding Int. No. 586, dated June 12, 2007.

13. Attached to this declaration as Pines Exhibit K is the full text of proposed Int. No. 586-A.

14. Attached to this declaration as Pines Exhibit L is the Report of the Governmental Affairs Division on proposed Int. No. 586-A.

15. Attached to this declaration as Pines Exhibit M is that portion of the Transcript of the Minutes of the Committee on Governmental Operations as pertains to proposed Int. No. 586-A, held on June 21, 2007.

16. Attached to this declaration as Pines Exhibit N is the written testimony submitted to the City Council regarding proposed Int. No. 586-A (referred to in some documents as “Intro. 586-A” and occasionally without the appended “A”), dated June 21, 2007.

17. Attached to this declaration as Pines Exhibit O is that portion of the Transcript of the Stated Council Meeting as pertains to proposed Int. No. 586-A, held on June 27, 2007.

18. Attached to this declaration as Pines Exhibit P is the that portion of the Transcript of the Public Hearing on Proposed Local Laws as pertains to proposed Int. No. 586-A, held on July 3, 2007.

19. Attached to this declaration as Pines Exhibit Q is the full text of Int. No. 651.

20. Attached to this declaration as Pines Exhibit R is the full text of proposed Int. No. 651-A.

21. Attached to this declaration as Pines Exhibit S is the Report of the Governmental Affairs Division on proposed Int. No. 651-A.

22. Attached to this declaration as Pines Exhibit T is that portion of the Transcript of the Minutes of the Committee on Governmental Operations as pertains to proposed Int. No. 651-A, held on December 6, 2007.

23. Attached to this declaration as Pines Exhibit U is the written testimony submitted to the City Council regarding Int. No. 651, dated December 6, 2007.

24. Attached to this declaration as Pines Exhibit V is the second Report of the Governmental Affairs Division on proposed Int. No. 651-A.

25. Attached to this declaration as Pines Exhibit W is that portion of the Transcript of the Minutes of the Committee on Governmental Operations as pertains to proposed Int. No. 651-A, held on December 18, 2007.

26. Attached to this declaration as Pines Exhibit X is the written testimony submitted to the City Council regarding proposed Int. No. 651-A, dated December 18, 2007.

27. Attached to this declaration as Pines Exhibit Y is that portion of the Transcript of the Stated Council Meeting as pertains to proposed Int. No. 651-A, held on December 19, 2007.

28. Attached to this declaration as Pines Exhibit Z is the full text of Int. No. 192.

29. Attached to this declaration as Pines Exhibit AA is the Report of the Governmental Affairs Division on Int. Nos. 190, 191, and 192.

30. Attached to this declaration as Pines Exhibit BB is the Transcript of the Minutes of the Committee on Governmental Operations regarding Int. Nos. 190, 191, and 192, held on April 4, 2006.

31. Attached to this declaration as Pines Exhibit CC is the full text of proposed Int. No. 192-A.

32. Attached to this declaration as Pines Exhibit DD is the Report of the Governmental Affairs Division on proposed Int. Nos. 190-A, 191-A, and 192-A.

33. Attached to this declaration as Pines Exhibit EE is the Transcript of the Minutes of the Committee on Governmental Operations regarding Int. Nos. 190-A, 191-A, and 192-A, held on May 24, 2006.



34. Attached to this declaration as Pines Exhibit FF is that portion of the Transcript of the Stated Council Meeting as pertains to proposed Int. Nos. 190-A, 191-A, and 192-A, held on May 24, 2006.

35. Attached to this declaration as Pines Exhibit GG are pages excerpted from the Deposition of plaintiff Shelia Anderson-Ricci, dated June 18, 2008.

36. Attached to this declaration as Pines Exhibit HH are pages excerpted from the Deposition of plaintiff Yvette Velazquez Bennett, dated June 19, 2008.

37. Attached to this declaration as Pines Exhibit II are pages excerpted from the Deposition of plaintiff Martin Malave Dilan, dated June 20, 2008.

38. Attached to this declaration as Pines Exhibit JJ are pages excerpted from the Deposition of plaintiff Tom Ognibene, dated June 17, 2008.

39. Attached to this declaration as Pines Exhibit KK are pages excerpted from the Deposition of plaintiff Robert Perez, dated June 17, 2008.

40. Attached to this declaration as Pines Exhibit LL are pages excerpted from the Deposition of plaintiff Fran Reiter, dated June 19, 2008.

41. Attached to this declaration as Pines Exhibit MM are pages excerpted from the Deposition of plaintiff Michele Russo, dated June 19, 2008.

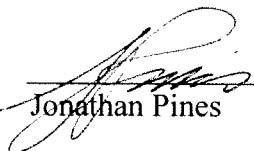
42. Attached to this declaration as Pines Exhibit NN are pages excerpted from the Deposition of plaintiff Marlene Tapper, dated June 18, 2008.

43. Attached to this declaration as Pines Exhibit OO are pages excerpted from the Deposition of plaintiff Viviana Vazquez-Hernandez, dated June 20, 2008.

44. Attached to this declaration as Pines Exhibit PP is an article from the Queens Chronicle regarding Tom Ognibene, dated July 31, 2008.

45. Appended under this declaration are the declarations of Peri Horowitz, Director of Special Compliance and Policy Assurance for the New York City Campaign Finance Board, dated August 4, 2008, with exhibits designated Horowitz Exhibits A-D attached thereto; David Karnovsky, General Counsel at the Department of City Planning for the City of New York, dated August 4, 2008; Amy Loprest, Executive Director of the New York City Campaign Finance Board, dated August 4, 2008, with exhibits designated Loprest Exhibits A-B attached thereto; Jesse Schaffer, Director of the Doing Business Accountability Project at the Mayor's Office of Contract Services, dated August 4, 2008, with an exhibit designated Schaffer Exhibit A attached thereto; Marla G. Simpson, Director of the Mayor's Office of Contract Services and the City Chief Procurement Officer, dated August 4, 2008; and Arnie Wolsky, Deputy Counsel to the City Clerk and Director of the Lobbying Bureau in the New York City Clerk's Office, dated August 4, 2008, with an exhibit designated Wolsky Exhibit A attached thereto.

Dated: New York, New York  
August 4, 2008

  
Jonathan Pines

Int. No. 651

By Council Member Felder (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to campaign finance.

*Be it enacted by the Council as follows:*

Section 1. Subdivisions 18 and 20 of section 3-702 of the administrative code of the city of New York, as added by local law number 34 for the year 2007, are amended to read as follows:

18. a. The term “business dealings with the city” shall mean (i) any contract (other than an emergency contract or a contract procured through publicly-advertised competitive sealed bidding) which is for the procurement of goods, [or] services or construction that is entered into or in effect with the city of New York or any agency or entity affiliated with the city of New York [(other than a contract procured through competitive sealed bidding, or one or more contracts with a single person or entity for the procurement of goods or services totaling not more than] and is valued at or above the dollar value [set forth] defined in [section 6-116.2(i)(3)(a)] subparagraph (a) of paragraph (3) of subdivision i of section 6-116.2 of the administrative code, or, [for construction totaling not more than] with respect to a contract for construction, at or above five hundred thousand dollars, or an emergency contract awarded pursuant to section 315 of the charter[]], and shall include any contract for the underwriting of the debt of the city of New York or any agency or entity affiliated with the city of New York and the retention of any bond counsel, disclosure counsel or underwriter’s counsel in connection therewith; or (ii) any acquisition or disposition of real property (other than a public auction or competitive sealed bid transaction or the acquisition of property pursuant to the

department of environmental protection watershed land acquisition program) with the city of New York or any agency or entity affiliated with the city of New York; or (iii) any application for approval sought from the city of New York pursuant to the provisions of section 195 of the charter, any application for approval sought from the city of New York that has been certified pursuant to the provisions of section 197-c of the charter, and any application for a zoning text amendment that has been certified pursuant to section 201 of the charter; provided, however, that for purposes of this clause, with respect to section 195 an applicant shall include the lessor of an office building or office space, and with respect to section 197-c an applicant shall include a designated developer or sponsor of a project for which a city agency or local development corporation is the applicant and provided, further, however, that owner-occupants of one, two and three family homes shall not be considered applicants pursuant to this clause; or (iv) [one or more concessions] any concession (other than [concessions] a concession awarded through publicly-advertised competitive sealed bid) or [franchises] any franchise from the city of New York or any agency or entity affiliated with the city of New York [with] which has an estimated [aggregate payments to the city of more than] annual value at or above the dollar value [set forth] defined in [section 6-116.2(i)(3)(a)] subparagraph (a) of paragraph (3) of subdivision i of section 6-116.2 of the administrative code [per fiscal year]; or (v) [one or more grants totaling not more than] any grant that is valued at or above the dollar value [set forth] defined in [section 6-116.2(i)(3)(a)] subparagraph (a) of paragraph (3) of subdivision i of section 6-116.2 of the administrative code, received from the city of New York or any agency or entity affiliated with the city of New York; or (vi) any economic development agreement entered into or in effect with the city of New York or

any agency or entity affiliated with the city of New York; or (vii) any contract for the investment of pension funds, including investments in a private equity firm and contracts with investment related consultants. In addition, for purposes of this chapter a lobbyist as defined in section 3-211 of this title shall be deemed to be engaged in business dealings with the city of New York during all periods covered by a registration statement. For purposes of clauses (i), (iv) and (v) of this subdivision, all contracts, concessions, franchises and grants that are five thousand dollars or less in value shall be excluded from any calculation as to whether a contract, concession, franchise or grant is a business dealing with the city. For purposes of clauses (ii) and (iii) of this subdivision, the department of city planning, in consultation with the board, may promulgate rules to require the submission by applicants to the city of information necessary to implement the requirements of subdivisions 1-a and 1-b of section 3-703 of this chapter as they relate to clauses (ii) and (iii) of paragraph (a) of this subdivision for purposes of inclusion in the doing business database established pursuant to subdivision [(20)] 20 of this section. [For purposes of this subdivision, actions, transactions, and agreements for the purpose of providing affordable housing pursuant to the Private Housing Finance Law or the General Municipal Law or any other city, state or federal program, including but not limited to actions, transactions and agreements for such purposes which involve land dispositions, loans, grants, real property tax exemptions, zoning bonuses, low income housing tax credits, rent subsidies, or agreements imposing limitations on the incomes of residents or on the rents or other charges to be paid by such residents, shall not constitute business dealings with the city of New York.] For purposes of this subdivision, “agency or entity affiliated with the city of New York” shall mean the city school district of the

city of New York and any public authority, public benefit corporation or not for profit corporation, the majority of whose board members are officials of the city of New York or are appointed by such officials. For purposes of this subdivision, the department of housing preservation and development shall promulgate rules setting forth which actions, transactions and agreements for the purpose of providing affordable housing shall constitute business dealings with the city of New York; provided, however, that such rules shall provide that only those actions, transactions and agreements for the purpose of providing affordable housing which involve the exercise of substantial discretion by one or more city officials shall constitute business dealings with the city of New York.

b. Business dealings with the city as defined in this subdivision shall be limited as follows: for purposes of clause (i) of paragraph (a) of this subdivision, bids or proposals on contracts for the procurement of goods, services, or construction shall only constitute business dealings with the city of New York for the period from the later of the submission of the bid or proposal or the date of the public advertisement for the contract opportunity until twelve months after the date of such submission or advertisement, and contracts for the procurement of goods, services or construction shall only constitute business dealings with the city of New York during the term of such contract (or in the case of purchase contracts for goods, from the date of such purchase) and for twelve months [after the end of such term] thereafter, provided, however that where such contract award is made from a line item appropriation and/or discretionary funds made by an elected official other than the mayor or the comptroller, such contract shall only constitute business dealings with the city from the date of adoption of the budget in which the appropriation of such contract is included until twelve months after the end of

the term of such contract; for purposes of clause (ii) of paragraph a of this subdivision, leases in which the city of New York is the proposed lessee[,] shall only constitute business dealings with the city from the date the application for acquisition is filed pursuant to section 195 or the date of the certification of such application pursuant to section 197-c to a period of one year after the commencement of the lease term or after the commencement of any renewal and, where the city or any city affiliated entity is disposing of any real property interest, shall only constitute business dealings with the city from the date of the submission of a proposal and during the term of any agreement and one year after; for purposes of clause (iii) of paragraph (a) of this subdivision, applications for approval sought from the city of New York pursuant to the provisions of sections 197-c or 201 of the charter, except for applications for leases as described in clause (ii), shall only constitute business [dealing] dealings with the city from the date of the certification of such application to the date that is one hundred twenty days after the date of filing by the council with the mayor of its action pursuant to subdivision e of section 197-d of the charter or, in the case of a decision of the city planning commission for which the council takes no action pursuant to paragraph (3) of subdivision (b) of section 197-d of the charter, the date which is twenty days following the filing of such decision with the council pursuant to subdivision a of section 197-d of the charter, provided, however, that in the case of a disapproval of a council action by the mayor pursuant to subdivision e of section 197-d of the charter, such date shall be one hundred twenty days after expiration of the ten day period for council override pursuant to such section; for purposes of clause (iv) of paragraph (a) of this subdivision, bids or proposals for franchises and concessions shall only constitute business dealings with the city of

New York for the period from the submission of the bid or proposal until twelve months after the date of such submission, concessions shall only constitute business dealings with the city of New York during the term of such concession and for twelve months after the end of such term, and franchises shall only constitute business dealings with the city of New York for the period of one year after the commencement of the term of the franchise or after the commencement of any renewal; for purposes of clause (v) of paragraph (a) of this subdivision, grants shall constitute business dealings with the city of New York for one year after the grant is made; for purposes of clause (vi) of paragraph (a) of this subdivision, economic development agreements shall constitute business dealings with the city from the submission of an application for such agreement and during the term of such agreement and for one year after the end of such term; and for purposes of clause (vii) of paragraph (a) of this subdivision, contracts for the investment of pension funds, including the investments in a private equity firm and contracts with investment related consultants shall constitute business dealings with the city from the time of presentation of investment opportunity or the submission of a proposal, whichever is earlier, and during the term of such contract and for twelve months after the end of such term.

c. Notwithstanding anything in this subdivision, a person, as defined by subdivision 20 of section 3-702, who has submitted bids or proposals on contracts for the procurement of goods, services or construction or who has submitted bids or proposals for franchises or concessions that are no longer being considered for an award or a person who for any other reason believes he or she should not be on the database may apply to the city chief procurement officer or other person designated by the mayor for removal from the doing business database and shall be removed from the database upon a



determination that said person should not be included in the database. The city chief procurement officer may promulgate rules for a process by which a person, as defined by subdivision 20 of section 3-702, may apply to the city chief procurement officer for a waiver from inclusion in the doing business database as defined by such subdivision in instances in which such person is providing essential goods, services or construction such as those necessary for security or other essential government operations. Such rules shall provide that the city chief procurement officer shall transmit to the board a copy of any application for a waiver and any such waiver may not be granted prior to the expiration of ten days from the date such application is received by the board. Such rules shall also provide that any such waiver may be granted only after substantial efforts have been made by the city chief procurement officer to obtain the information required by this law. Such rules shall also provide that the city chief procurement officer may grant the waiver only upon a finding that it is in the best interests of the city, which finding shall only be made upon a determination that (i) there is a compelling need to obtain such essential goods, services or construction from the person seeking the exemption and (ii) no other reasonable alternative exists in light of such considerations as cost, uniqueness and the critical nature of such goods, services or construction to the accomplishment of the purchasing agency's mission. Such rules may also provide that a waiver may be granted when a person is doing business with the city by virtue of the city's exercise of its powers of eminent domain. Any grant of a waiver shall be posted on the city's and the board's website in locations that are accessible by the public.

d. A person, as defined by subdivision 20 of section 3-702, shall be considered to have business dealings with the city as of the date the person's name is entered in the

doing business database, as such date is indicated in such database, or the date the person began doing business with the city, as such date is indicated in such database, whichever is earlier, except that the date on which the person is considered doing business with the city shall not be earlier than thirty days before the date the person's name is entered into such database.

20. The term "doing business database" means a computerized database accessible to the board that contains the names of persons who have business dealings with the city; provided, however, that for purposes of this chapter the doing business database shall not be required to contain the names of any person whose business dealings with the city are solely of a type for which the board has not certified that such database includes the names of those persons engaged in such type of business dealings with the city. Such database shall be developed, maintained and updated by the office of the mayor in a manner so as to ensure its reasonable accuracy and completeness; provided, however, that in no event shall such database be updated less frequently than once a month. Such computerized database shall contain a function to enable members of the public to determine if a given person is in the database because such person has business dealings with the city. For purposes of this definition, the term "person" shall include an entity that has business dealings with the city, any chief executive officer, chief financial officer and/or chief operating officer of such entity or persons serving in an equivalent capacity, any person employed in a senior managerial capacity regarding such entity, or any person with an interest in such entity which exceeds ten percent of the entity, provided, however, that "entity" for purposes of this definition shall not include a neighborhood, community or similar association consisting of local residents or

homeowners organized on a non-profit basis where such association is the applicant pursuant to subsection (3) of subdivision (a) of section 197-c of the charter or pursuant to section 201 of the charter or is a parent company or an affiliated company of an entity. For purposes of this subdivision, the phrase “senior managerial capacity” shall mean a high level supervisory capacity, either by virtue of title or duties, in which substantial discretion and oversight is exercised over the solicitation, letting or administration of [any contract, franchise or concession, grant or economic development agreement with the city or application for any land use approval from the city] business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements and applications for land use approvals.

§2. Subdivisions 1-a and 1-b of section 3-703 of the administrative code of the city of New York, as added by local law 34 for the year 2007, are amended to read as follows:

1-a. Notwithstanding any inconsistent provision of this section, a participating candidate or his or her principal committee may not accept, either directly or by transfer, [a] any contribution or contributions for a covered election in which he or she is a participating candidate from a natural person who has business dealings with the city, as that term is defined in subdivision eighteen of section 3-702 of this chapter, if the aggregate of such contributions to such candidate from such person for [such election does not exceed] all covered elections in the same calendar year exceeds: (i) for the office of mayor, public advocate or comptroller four hundred dollars; (ii) for borough president three hundred twenty dollars; and (iii) for member of the city council two hundred fifty dollars. Any contribution made pursuant to this section shall not be a

matchable contribution. For purposes of this subdivision, “person” shall include any chief executive officer, chief financial officer and/or chief operating officer of an entity which has business dealings with the city, any person employed in a senior managerial capacity regarding such an entity, or any person with an interest in such an entity which exceeds ten percent of the entity. For purposes of this subdivision, the phrase “senior managerial capacity” shall mean a high level supervisory capacity, either by virtue of title or duties, in which substantial discretion and oversight is exercised over the solicitation, letting or administration of [any contract, franchise, or concession, grant or economic development agreement with the city or application for any land use approval from the city] business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements and applications for land use approvals. Notwithstanding any provision of this subdivision, the limitations on contributions contained herein shall not apply to any contribution made by a natural person who has business dealings with the city to a participating candidate or his or her principal committee where such participating candidate is the contributor, or where such participating candidate is the contributor’s parent, spouse, domestic partner, sibling, child, grandchild, aunt, uncle, cousin, niece or nephew by blood or by marriage.

1-b. Individuals and organizations having business dealings with the city of New York. a. Each participating candidate and his or her principal committee shall inquire of every individual or entity making, a contribution, loan, guarantee or other security for such loan in excess of the amounts set forth in subdivision 1-a of section 3-703, through a question, in a form prescribed by the campaign finance board, as to whether such individual, corporation, partnership, political committee, employee organization or other

entity has business dealings with the city, as that term is defined in this chapter, and, if so, the name of the agency or entity with which such business dealings are or were carried on and the appropriate type or category of such business dealings. Such form shall contain in prominent typeface and in a prominent location the statement "If a contributor has business dealings with the City as defined in the campaign finance act, such contributor may contribute only up to two hundred fifty dollars for city council, three hundred twenty dollars for borough president and four hundred dollars for mayor, comptroller or public advocate." Upon receipt of the response to such inquiry (including any failure to respond), the principal committee shall keep a copy in its records and shall report each contribution to the board on the next applicable filing deadline in accordance with the board's disclosure schedule. The board shall check each contribution against the doing business database and shall notify the principal committee within twenty days of the reporting of such contribution if a contribution exceeding the doing business contribution limitation set forth in subdivision 1-a of section 3-703 is subject to such limitations of this subchapter or if a contribution is not matchable pursuant to such subdivision. Notwithstanding any provision in this subdivision, in the six weeks preceding the covered election the board shall provide such notification to the principal or authorized committee within three business days of the reporting of such contribution to the board in accordance with applicable reporting deadlines. If the board fails to notify the principal committee that a contribution is in excess of the limitations set forth in subdivision 1-a of section 3-703 of this chapter in accordance with this subdivision, any such contribution shall be deemed valid for purposes of such limitation, provided, however, that no such contribution shall be matchable. Such principal committee shall

have twenty days from the date of any such notification to return the amount of any contribution in excess of the limitations set forth in subdivision 1-a of section 3-703 to the contributor. No violation shall issue and no penalty shall be imposed where such excess amount is postmarked or delivered within twenty days of such notification by the board and the board shall not designate a candidate as having accepted a contribution in excess of such limitations where such excess has been returned in accordance with the time limitations set forth herein. Failure to return such excess amount in accordance with the provisions herein shall not result in the board withholding public funds for which the participating candidate's principal committee is otherwise eligible pursuant to section 3-705 of this chapter; provided, however, that the board may deduct an amount equal to the total unreturned contributions in excess of the limitations set forth in subdivision 1-a of section 3-703 of this chapter from such payment of public funds. For purposes of this section, "individual" shall include any chief executive officer, chief financial officer, and/or chief operating officer of an entity or persons serving in an equivalent capacity, any person in a senior managerial capacity regarding an entity, or any person with an interest in an entity, which exceeds ten percent of the entity. For purposes of this subdivision, the phrase "senior managerial capacity" shall mean a high level supervisory capacity, either by virtue of title or duties, in which substantial discretion and oversight is exercised over the solicitation, letting or administration of [any contract, franchise, or concession, grant or economic development agreement with the city or application for any land use approval from the city] business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements, and applications for land use approvals. Notwithstanding any other provision of this section,

no participating candidate shall be liable for any fine or penalty for the failure of any contributor to respond to any such request or for any erroneous response.

§3. Subparagraph (i) of paragraph c of subdivision 1 of section 3-703 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

(i) the tenth day of June in the year of the covered election, or such other later date as the board shall provide, provided, however, that any candidate who files such written certification prior to such date shall be permitted to rescind such certification in writing on or before such date;

§4. Subdivision 10 of section 3-705 of the administrative code of the city of New York, as added by local law 34 for the year 2007, are amended to read as follows:

10. [Participating candidates] A participating candidate who [lose] loses in the primary election but [remain] remains on the ballot for the general election must certify to the board before receiving public funds that [they] he or she will actively campaign for office; [by including,] such campaign activity shall include, but not be limited to, raising and spending funds, seeking endorsements, and broadly soliciting votes [before receiving public funds].

§5. Subdivision 4 of section 3-705 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

4. The campaign finance board shall make possible payment within four business days after receipt of reports of matchable contributions, or as soon thereafter as is practicable, but not earlier than the earliest dates for making such payments as provided in subdivisions five and six of section 3-709; provided, however, that the board

shall withhold up to five percent of all public funds payments to participating candidates until the final pre-election payment for any given election. The board shall schedule a minimum of three payment dates within the thirty days prior to a covered election. For purposes of such payment dates, the board shall provide each candidate with a written determination specifying the basis for any non-payment. The board shall provide candidates with a process by which they may immediately upon receipt of such determination petition the board for reconsideration of any such non-payment and such reconsideration shall occur within five business days of the filing of such petition. In the event that the board denies such petition then it shall immediately notify the candidate of [its] his or her right to [appeal to appeal] bring a special proceeding pursuant to article 78 of the civil practice law and rules.

§6. Subparagraph (i) of paragraph (b) of subdivision 5 of section 3-709.5 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, and subdivision 12 of section 3-709.5 of the administrative code of the city of New York, as added by local law 34 for the year 2007, are amended to read as follows:

(b)(i) Except as otherwise provided in subparagraph (ii) below, each debate for a primary, general or special election shall include only those participating candidates or limited participating candidates the sponsor of each such debate has determined meet the non-partisan, objective, and non-discriminatory criteria set forth in any agreement between the sponsor and the board; provided, however, that the criteria for the first debate for a primary, general, or special election shall provide, among other criteria, (A) that a participating candidate shall be eligible to participate in such debate if he or she has, by the last filing date prior to such debate, (I) spent, contracted, or obligated to



spend, and (II) received in contributions, an amount equal to or more than twenty percent of the threshold for eligibility for public funding applicable to participating candidates contained in subdivision two of section 3-703, and (B) that a limited participating candidate shall be eligible to participate in such debate if he or she has, by the last filing date prior to such debate, spent, contracted, or obligated to spend, an amount equal to or more than twenty percent of the threshold for eligibility for public funding applicable to participating candidates seeking the office for which such debate is being held contained in subdivision two of section 3-703; provided, however, that for the purpose of determining whether a candidate has met the financial criteria to be eligible to participate in such debate, only contributions raised and spent in compliance with the act shall be used to determine whether the candidate has raised and spent twenty percent of the threshold for eligibility for public funding applicable to participating candidates contained in subdivision two of section 3-703; provided, further, that the second debate for a primary, general, or special election shall include only those participating candidates or limited participating candidates who the sponsor has also determined are leading contenders on the basis of additional non-partisan, objective, and non-discriminatory criteria set forth in any agreement between the sponsor and the board. Nothing in this provision is intended to limit the debates to the two major political parties.

12. The city of New York shall indemnify each sponsor for any liability of such sponsor arising out of the acts or omissions of the city of New York in connection with the selection of candidates for participation in any debate[,] held pursuant to this section 3-709.5.

§7. Paragraph b of subdivision 2 of section 3-710 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

b. If the board determines that any portion of the payment made to a principal committee of a participating candidate from the fund was used for purposes other than qualified campaign expenditures, it shall notify such candidate and committee of the amount so disqualified and such candidate and committee shall pay to the board an amount equal to such disqualified amount; provided, however, that in considering whether or not a participating candidate shall be required to pay to the board such amount or an [amountless] amount less than the entire disqualified amount, the board shall act in accordance with the following: (i) where credible documentation supporting each qualified campaign expenditure exists but is incomplete, the board shall not impose such liability for such expenditure; and (ii) where there is an absence of credible documentation for each [qualified\_campaign] qualified campaign expenditure, the board may impose liability upon a showing that such absence of credible documentation for such expenditure arose from a lack of adequate controls including, but not limited to trained staff, internal procedures to follow published board guidelines and procedures to follow standard financial controls.

§8. Subdivision 19 of section 3-702 of the administrative code of the city of New York, as added by section 17 of local law 34 for the year 2007, is renumbered as subdivision 21 and amended to read as follows:

[19] 21. a. For purposes of campaigns that accept public funds pursuant to section 3-705 of this chapter, the terms “expenditure” and “campaign expenditure” shall

include all payments and liabilities in furtherance of a political campaign for covered office, including, but not limited to, all qualified campaign expenditures and expenditures subject to or exempt from the expenditure limitations of this chapter [pursuant to sections 3-706 and 3-712. In addition, there], There shall be a rebuttable presumption that the following expenditures are in furtherance of a political campaign for elective office; provided, however, that the presumptions contained in this subdivision shall not apply to an expenditure [made when the expenditure is] to a person or entity associated with the candidate [making such expenditure or on whose behalf such candidate's committee made such expenditure]; and provided further that in rebutting any such presumption the campaign finance board may consider factors including the timing of the expenditure and whether the campaign had an unusually high amount of spending on a particular type of expenditure. For purposes of this subdivision a person or entity associated with a candidate [includes] shall include the candidate's spouse, domestic partner, child, parent, or sibling[,] or a person or entity with whom or with which the candidate has a business or other financial relationship:

1. Contributions to charitable organizations designated as 501(c)(3) organizations pursuant to the internal revenue code;
2. Contributions to candidates and political committees subject to the provisions of section 3-705(8);
3. Community events including, but not limited to, events hosted by civic [associations] and neighborhood [association] associations; provided, however, that this presumption shall not apply to sporting events, concerts, theater or other entertainment events which shall be subject to the provisions of paragraph b;

4. Ballot proposal advocacy where there are indicia that the expenditure relates to the candidate;

5. Travel related solely and exclusively to a political campaign for a covered office or the holding of public office; provided, however, that any travel not related solely and exclusively to a political campaign or the holding of public office shall be subject to the provisions of paragraph b;

6. Legal defense of a non-criminal matter arising out of a political campaign;

7. Computer hardware, software and other office technology purchased more than two weeks before the date of a primary election, in the case of a candidate who is opposed in the primary election, or two weeks before the date of a general election, in the case of a candidate who was not opposed in a primary election;

8. A post-election event for staff, volunteers and/or supporters held within thirty days of the election;

9. Payment of non-criminal penalties or fines arising out of a political campaign;

10. Costs incurred in demonstrating eligibility for the ballot[,] or public funds payments or defending against a claim that public funds must be repaid; and

11. Food and beverages provided to campaign workers and volunteers[; and].

b. Campaign funds shall not be converted by any person to a personal use which is unrelated to a [political campaign] candidate's nomination for election or election. Expenditures not in furtherance of a political campaign for elective office include the following:

1. Expenditures to defray the normal living expenses of the candidate, immediate family of the candidate[,] or any other individual except for the provision of such expenses for professional staff as part of a compensation package;
2. Any residential[,] or household items, supplies or expenditures;
3. Clothing, haircuts and other personal grooming;
4. Funeral, cremation[,] or burial expenses including any expenses related to a death within a candidate's or officeholder's family;
5. Automobile purchases;
6. Tuition payments[,]and childcare costs;
7. Dues, fees[,] or gratuities at a country club, health club, recreational facility or other nonpolitical organization unless part of a specific fundraising event that takes place on the organization's premises;
8. Admission to a sporting event, theater, concert or other entertainment event not part of a specific campaign activity;
9. Expenditures for non-campaign related travel, food, drink or entertainment; if a candidate uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign activities, the incremental expenses that result from the personal activities shall be considered for personal use unless the [person] candidate benefiting from the use reimburses the campaign account within thirty days for the full amount of the incremental expenses; and
10. Gifts, except for brochures, buttons, signs and other campaign materials and token gifts valued at not more than fifty dollars that are for the purpose of expressing gratitude, condolences or congratulations.

§9. Paragraph (l) of subdivision 1 of section 3-703 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

(l) not accept and his or her principal committee or authorized committees must not accept, either directly or by transfer, any contribution, loan, guarantee, or other security for such loan from any corporation, limited liability company, limited liability partnership[,] or partnership, other than a corporation, limited liability company, limited liability partnership[,] or partnership that is a political committee as defined in subdivision eleven of section 3-702 of this chapter, for all covered elections held in the same calendar year in which he or she is a participating or non-participating candidate, provided, however, that where a contribution is from a contributor whose name is followed by a professional designation including but not limited to “M.D.”, “Esq.” and “C.P.A.” the board shall not treat such contribution as coming from a corporation, limited liability company [or], limited liability partnership or partnership in the absence of further indicia that such contribution is from such an entity;

§10. Paragraph (j) of subdivision 2 of section 3-704 of the administrative code of the city of New York, as added by local law 34 for the year 2007, is amended to read as follows:

(j) payment of any penalty or fine imposed pursuant to federal, state or local law;  
or

§11. Paragraph (a) of subdivision 2 of section 3-705 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

(a) If the threshold for eligibility is met, the participating candidate's principal committee shall receive payment for qualified campaign expenditures of six dollars for each one dollar of matchable contributions, up to one thousand fifty dollars in public funds per contributor (or up to five hundred [twenty-five] twenty-two dollars in public funds per contributor in the case of a special election), obtained and reported to the campaign finance board in accordance with the provisions of this chapter.

§12. Subdivision 7 of section 3-705 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

7. Notwithstanding any provision of this section to the contrary, the amount of public funds payable a participating candidate on the ballot in any covered election shall not exceed one quarter of the maximum public funds payment otherwise applicable under subdivision two of this section, unless:

[(b)](a) the participating candidate is opposed by a candidate and the board has determined that such other candidate and his or her authorized committees have spent or contracted or have obligated to spend, or received in loans or contributions, or both, an amount which, in the aggregate, exceeds one-fifth of the applicable expenditure limit for such office fixed by subdivision one of section 3-706 of this chapter for participating candidates; or

[(c)](b) the participating candidate has submitted a certified signed statement attesting to the need and stating the reason for additional public funds in such election, in which case the board shall publish such statement at the time such additional public funds are paid, including on the board's internet website. Such statement must certify that (i) one or more of the following conditions [applies and provide documentation in support of

such condition] apply and (ii) [that] such condition or conditions reasonably [demonstrates] demonstrate the need for such public funds[.], and the participating candidate must provide documentation demonstrating the existence of such condition or conditions:

(1) the participating candidate is opposed by (i) a non-participating candidate or (ii) a limited participating candidate, and provides a factual basis with supporting documentation of such candidate's ability to self finance;

(2) the participating candidate is opposed by a candidate who has received (i) the endorsement of a citywide or statewide elected official or a federal elected official representing all or a portion of the area covered by the election; (ii) two or more endorsements from other city elected officials who represent all or a part of the area covered by the election; or (iii) endorsements of one or more membership organizations with a membership of over 250 members;

(3) the participating candidate is opposed by a candidate who has had significant media exposure in the twelve months preceding the election. For purposes of this paragraph, significant media exposure shall mean appearance of the opponent or his or her name [in] on television[,], or radio in the area of the covered election or in print media in general circulation in the area of the covered election at least twelve times in the year preceding the covered election; provided, however, that the listing of names of candidates or potential candidates for a covered election without additional information concerning the opponent shall not constitute an appearance for purposes of this paragraph;



(4) the participating candidate is opposed by a candidate who has received twenty-five percent or more of the vote in an election for public office in an area encompassing all or part of the area that is the subject of the current election in the last eight years preceding the election;

(5) the participating candidate is opposed by a candidate whose name is substantially similar to the candidate's so as to result in confusion among voters, as determined by the board;

(6) the participating candidate in a city council or borough-wide race is opposed by a candidate who is a chairman or president of a community board or district manager of a community board; or

(7) the participating candidate is opposed by a candidate whose spouse, domestic partner, sibling, parent or child [hold or have held] holds or has held elective office in an area encompassing all or part of the area [that is the subject] of the [current] covered election in the past ten years.

The board shall be authorized to verify the truthfulness of any certified statement submitted pursuant to this paragraph and of any supporting documentation and shall post such [certifications] certified statements and supporting documentation on its website.

~~[(d)]~~(c) the participating candidate is opposed in a primary or special election for an office for which no incumbent is seeking re-election.

If any of the conditions described in paragraphs (a), (b), or (c) [or (d)] occur in such election, the board shall pay any and all additional public funds due to the participating candidate up to the maximum total payment applicable in such election

under subdivisions two or six of this section or subdivision three of section 3-706 of this chapter.

§13. Paragraph (a) of subdivision 1 of section 3-706 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

(a) Except as provided in paragraph (b) of this subdivision, in each primary election, in each special election to fill a vacancy, and in each general election, expenditures by a participating candidate or a limited participating candidate and his or her principal committee for one of the following offices shall not exceed the following amounts:

mayor:	[\$6,157,600] <u>\$6,158,000</u>
public advocate or comptroller:	[\$3,849,575] <u>\$3,850,000</u>
borough president:	[\$1,385,675] <u>\$1,386,000</u>
member of the city council:	[\$161,250] <u>\$161,000</u>

§14. Subdivision 2 of section 3-706 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

2. The following limitations apply to all expenditures made by a participating or limited participating candidate and his or her principal committee in the three calendar years preceding the year of the election for which such candidate chooses to file a certification as a participating or limited participating candidate pursuant to this chapter and to expenditures made at any time prior to such date for services, materials, facilities, advertising or other things of value received, rendered, published, distributed or broadcast in such calendar years. Such expenditures by a participating or limited participating

candidate for one of the following offices and his or her principal committee shall not exceed the following amounts:

mayor, public advocate or comptroller:	[\$290,250] <u>\$290,000</u>
borough president:	\$129,000
member of the city council:	\$43,000

§15. Subdivision 1 of section 3-710 of chapter 7 of title 3 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

1. The campaign finance board is hereby empowered to audit and examine all matters relating to the performance of its functions and any other matter relating to the proper administration of this chapter and of chapter 8 of title 3 of this code. The board shall conduct its campaign audits in accordance with generally accepted government auditing standards, and shall [issue] promulgate rules regarding what documentation is sufficient in demonstrating financial activity. These audit and examination powers extend to all participating candidates, limited participating candidates, and non-participating candidates, and the principal and authorized committees of all participating, limited participating, and non-participating candidates, provided that:

a. Any draft audit, the subject of which is a participating, limited participating[,] or non-participating candidate, or the principal and/or authorized committees of any participating, limited participating[,] or non-participating candidate shall be completed within (i) eight months after the submission of the final disclosure report for the covered election for city council races and borough-wide races[;], and (ii) ten months after the

submission of the final disclosure report for the covered election for citywide races, unless the subject of such audit consents in writing to a longer period of time;

b. The campaign finance board shall provide each candidate a final audit, which shall contain the final resolution of all issues raised in the draft audit; such final audit shall be provided to the candidate, where such candidate or such candidate's campaign manager or treasurer has completed audit training provided by the board, within (i) [within] fourteen months after the submission of the final disclosure report for the covered election, for city council races and borough-wide races[;], and (ii) sixteen months after the submission of the final disclosure report for the covered election for citywide races, unless the subject of such audit consents in writing to a longer period of time. Where such candidate or such candidate's campaign manager or treasurer has not completed audit training provided by the campaign finance board, such final audit shall be provided to such candidate within (i) [within] sixteen months after the submission of the final disclosure report for the covered election, for city council races and borough-wide races[;], and (ii) eighteen months after the submission of the final disclosure report for the covered election for citywide races, unless the subject of such audit consents in writing to a longer period of time. Provided, however, that where the issuance of such final audit is preceded by a notice of violations and recommended penalties and/or a notice of repayment of public funds, such notice or notices shall include all potential penalties and/or repayment obligations and a notice of a candidate's right to a hearing pursuant to section 3-710.5 or section 3-710(4) of this chapter and shall be provided to the candidate according to the deadlines applicable to final audits as set forth in this paragraph.

c. Any advice provided by board staff to a participating, limited participating, or non-participating [candidates] candidate with regard to an action shall be presumptive evidence that such action, if taken in reliance on such advice, should not be subject to a penalty or repayment obligation where such candidate[,], or such candidate's committee has confirmed such advice in a writing to such board staff by registered or certified mail to the correct address, or by electronic or facsimile transmission with evidence of receipt, [that describes] describing the action to be taken pursuant to the advice given and the board or its staff has not responded to such written confirmation within seven business days disavowing or altering such advice, provided that the board's response shall be by registered or certified mail to the correct address, or by electronic or facsimile transmission with evidence of receipt.

d. Notwithstanding the provisions of paragraphs a and b of this [section] subdivision, if a committee has failed to respond to a request for information made by board auditors during the post-election audit process, the time period for completing the draft and final audits shall be tolled and extended by the number of days by which the committee has exceeded the original deadline for a response, provided that the committee has received timely written notice of: [(a)](i) the original deadline to provide the information, which shall not have been less than thirty days from the date such information was requested[,]; and [(b)](ii) the commencement of the tolling period pursuant to this section. If a committee has responded to a request for information made by board auditors but such response is inadequate, the time period for completing the draft and final audits shall be tolled and extended by the number of days until an adequate response is provided, provided that the committee has received timely written notice of:

[(a)](i) the original deadline to provide the information, which shall not have been less than thirty days from the date such information was requested[.]; [(b)](ii) the commencement of the tolling period pursuant to this section; and [(c)](iii) the detailed reasons why the original response was inadequate.

e. Notwithstanding any provision of law to the contrary, the deadlines provided in [subdivisions] paragraphs a and b of this [section] subdivision for the completion of draft and final audits shall not apply in cases where the audit raises issues involving potential campaign-related fraud, potential other criminal activity, or activity that may constitute a breach of certification pursuant to rules of the board[, ] or potential significant violations of the limits set forth in section 3-706.

f. Notwithstanding any provision of the law to the contrary, the deadlines provided in [subdivisions] paragraphs a and b of this [section] subdivision for the completion of draft and final audits shall not apply in the event that board operations are interrupted due to a catastrophic emergency such as a natural disaster or criminal event, provided that once board operations resume, the board shall within two weeks announce new deadlines for the completion of draft and final audits consistent with [provisions] paragraphs a and b.

§16. Paragraph (c) of subdivision 2 of section 3-710 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

2. (c)[ (i)] If the total of contributions, other receipts, and payments from the fund received by a participating candidate and his or her principal committee exceed the total campaign expenditures of such candidate and committee for all covered elections held in

the same calendar year or for a special election to fill a vacancy such candidate and committee shall use such excess funds to reimburse the fund for payments received by such committee from the fund during such calendar year or for such special election. No such excess funds shall be used for any other purpose, unless the total amount of the payments received from the fund by the principal committee has been repaid.

§17. Subdivision 4 of section 3-710 of the administrative code of the city of New York, as added by local law 34 for the year 2007, is amended to read as follows:

4. ~~[[a)]~~ No claim for the repayment of public funds shall be made against any candidate or committee without written notice to such candidate or committee, issued in a timely manner pursuant to [the] all of the requirements of subdivision one of this section, and [a reasonable] an opportunity to appear before the board. Any such repayment claim shall be based on a final determination [to be] issued by the board following an adjudication before the board consistent with the procedures set forth in section 1046 of the charter unless such procedures are waived by the candidate or principal committee. Such final determination shall be included in and made part of the final audit which shall be issued within thirty days of such determination[-].

§18. Section 3-710.5 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

§ 3-710.5 Findings of violation or infraction; adjudications; [or] final determinations. (i) The board shall determine whether a participating candidate, his or her principal committee, principal committee treasurer or any other agent of a participating candidate has committed a violation or infraction of any provision of this chapter or the rules promulgated hereunder, for which the board may assess a civil

penalty pursuant to section 3-711 of this chapter. The board shall promulgate rules defining infractions, and such definitions shall include, but not be limited to, failures to comply with the provisions of this chapter or the rules promulgated hereunder that are limited and non-repetitive.

(ii)(a) The board shall give written notice and the opportunity to appear before the board to any participating, limited participating or non-participating candidate, his or her principal committee, authorized committee, committee treasurer or any other agent of such candidate, if the board has reason to believe that such has committed a violation or infraction before assessing any penalty for such action. Any such written notice of alleged violations shall be issued in a timely manner pursuant to all of the requirements of subdivision one of section 3-710 and shall precede the issuance of the final audit required pursuant to subdivision one of section 3-710. In the case of a written notice issued prior to the date of a covered election, or after the date of a covered election in[ ]the case of a notice regarding an alleged failure to respond to a request for audit documentation, such notice may be issued prior to the issuance of a draft audit. Alleged violations and proposed penalties shall be subject to resolution by adjudication before the board consistent with the procedures of section 1046 of the charter, unless such procedures are waived by the candidate or principal committee; provided, however, that in the case of adjudications conducted prior to the date of a covered election, the board shall use the procedures of section 1046 of the charter only to the extent practicable, given the expedited nature of such pre-election adjudications. The board shall issue a final determination within thirty days of the conclusion of the adjudication proceeding.



(b) The board shall include in every final determination: (i) notice of the [respondents'] respondent's right to bring a special proceeding challenging the board's final determination in New York State supreme court [brought] pursuant to article 78 of the civil practice law and rules; and (ii) notice of the commencement of the four-month period during which such a special proceeding may be brought pursuant to article 2 of the civil practice law and rules.

§19. Subdivision 4 of section 3-711 of the administrative code of the city of New York, as added by local law 34 for the year 2007, is amended to read as follows:

4. Notwithstanding any provision of law to the contrary, any participating or limited participating candidate and his or her principal committee or any non-participating candidate and his or her authorized committees or any other person who [commit] commits any violation of this chapter or any rules promulgated hereunder and who [take] takes all steps necessary to correct such violation prior to receiving written notice from the board of the existence of the potential violation [pursuant to section 3-710.5] shall not be subject to any penalty for such violation.

§20. Section 3-720 of the administrative code of the city of New York, as added by local law 34 for the year 2007, is amended to read as follows:

§3-720. Tolling of time for notice of alleged violations [or penalties.] and/or notice of repayment of public funds. If a committee has failed to respond to a request for information made by board auditors or has inadequately responded during the post-election audit process and the board has satisfied the provisions of subdivision 1 of section 3-710, the time period for serving notice shall be tolled and extended by the number of days by which the committee has exceeded the original deadline for a

response, provided that the committee has received timely written notice of: (a) the original deadline to provide the information, which shall not have been less than thirty days from the date such information was requested, and (b) the commencement of the tolling period pursuant to this section.

§21. Paragraph (d) of subdivision 2 of section 3-801 of the administrative code of the city of New York, as added by local law 34 for the year 2007, is amended to read as follows:

(d) not accept any donation or donations of money, goods, or services from any corporation, limited liability company, limited liability partnership or partnership not permitted to contribute pursuant to paragraph (l) of subdivision 1 of section 3-703 or from any person whose name appears in the doing business database as of the date of such donation; provided, however, that this limitation on donations shall not apply to any donation to a transition or inauguration entity authorized pursuant to subdivision one of this section made by a natural person who has business dealings with the city [to a transition or inaugural committee] where such donation is from the candidate-elect[,] or from the candidate-elect's parent, spouse, domestic partner, sibling, child, grandchild, aunt, uncle, cousin, niece or nephew by blood or by marriage.

§22. Subparagraph (iii) of paragraph a of subdivision 3 of section 3-706 of the administrative code of the city of New York, as added by local law 34 for the year 2007, is amended to read as follows:

(iii) [with regard to contributions raised on or] for elections occurring after January first, two thousand eight for elections occurring after such date, the campaign finance board shall promulgate rules to provide that the principal committees of such

participating candidates shall receive payment for qualified campaign expenditures that will provide the highest allowable matchable contribution to be matched by an amount up to one thousand two hundred fifty dollars in public funds per contributor (or up to six hundred twenty five dollars in public funds per contributor in the case of special election); provided, however, that (A) participating candidates in a run-[ ]off election shall receive public funds for such election pursuant to subdivision five of section 3-705 and shall not receive any additional public funds pursuant to this section, and (B) in no case shall a principal committee receive in public funds an amount exceeding two-thirds of the expenditure limitation [provide] provided for such office in subdivision one of this section.

§23. Subparagraph (iii) of paragraph b of subdivision 3 of section 3-706 of the administrative code of the city of New York, as added by local law number 34 for the year 2007, is to read as follows:

(iii) [with regard to contributions raised on or] for elections occurring after January first, two thousand eight for elections occurring after such date, the campaign finance board shall promulgate rules to provide that the principal committees of such participating candidates shall receive payment for qualified campaign expenditures that will provide the highest allowable matchable contribution to be matched by an amount up to one thousand five hundred dollars in public funds per contributor (or up to seven hundred fifty dollars in public funds per contributor in the case of special election); provided, however, that (A) participating candidates in a run-[ ]off election shall receive public funds for such election pursuant to subdivision five of section 3-705 and shall not receive any additional public funds pursuant to this section, and (B) in no case shall a

principal committee receive in public funds an amount exceeding [~~two-thirds~~] one hundred twenty-five percent of the expenditure limitation [~~provide~~]provided for such office in subdivision one of this section.

§24. Paragraph (a) of subdivision 2 of section 3-703 of the administrative code of the city of New York, as amended by local law 58 of the year 2004, is amended to read as follows:

(a) The threshold for eligibility for public funding for participating candidates in a primary or general election, or special election to fill a vacancy, shall be in the case of:

(i) mayor, not less than two hundred fifty thousand dollars in matchable contributions comprised of sums up to [~~two hundred fifty~~]one hundred seventy-five dollars per contributor including at least one thousand matchable contributions of ten dollars or more;

(ii) public advocate and comptroller, not less than one hundred twenty-five thousand dollars in matchable contributions comprised of sums of up to [~~two hundred fifty~~]one hundred seventy-five dollars per contributor including at least five hundred matchable contributions of ten dollars or more;

(iii) borough president, an amount equal to the number of persons living in such borough as determined by the last census multiplied by two cents in matchable contributions comprised of sums of up to [~~two hundred fifty~~]one hundred seventy-five dollars per contributor including at least one hundred matchable contributions of ten dollars or more from residents of the borough, or ten thousand dollars comprised of sums of up to [~~two hundred fifty~~]one hundred seventy-five dollars per contributor, whichever is greater.

(iv) member of the city council, not less than five thousand dollars in matchable contributions comprised of sums of up to [two hundred fifty]one hundred seventy-five dollars per contributor including at least seventy-five matchable contributions of ten dollars or more from residents of the district in which the seat is to be filled.

§25. Section 38 of local law 34 for the year 2007 is REPEALED, section 39 of local law 34 for the year 2007 is renumbered section 38, and sections 36, 37, and 38 of local law 34 for the year 2007 are amended to read as follows:

§36. Each city agency with which any person who has business dealings with the city conducts such business shall[,] provide appropriate assistance in developing the doing business data base and shall take such steps as necessary to collect such information as required pursuant to this local law. Each city agency with which any person who has business dealings with the city conducts such business shall, at the board's request, provide appropriate assistance to the board in publicizing this local law and the rules of the board in connection with contributions of persons who have business dealings with the city; provided, however, that the rules shall not be [provided] applied to persons in categories of doing business activities before such categories are certified by the campaign finance board in accordance with section [twenty-six] thirty-seven of this local law.

§37. Sections one, two, eight, eleven, twelve and forty of this local law shall take effect immediately provided that the implementation of such sections shall take effect as follows: (i) [all of] the provisions of such sections concerning the holding of contracts for the procurement of goods, services or construction shall take effect thirty days after the campaign finance board and the department of information technology and

telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity[,] and persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity [regarding] of an entity with a city contract pursuant to clause (i) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law; (ii) [all of] the provisions of this local law concerning any bid or proposal for a contract for the procurement of goods, services or construction, and the provisions regarding persons employed in a senior managerial capacity with respect to any entity with a city contract pursuant to clause (i) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, and persons with an interest in an entity which exceeds ten percent of the entity that has submitted a bid or proposal seeking such a contract, and persons employed in a senior managerial capacity of [entities that have submitted bids] any entity holding such a contract or that has submitted a bid or proposal seeking such a contract; (iii) the provisions of this local law concerning acquisition or disposition of real property, [applications for approvals] any application for approval sought pursuant to the provisions of section 195 [or] of the charter, any application for approval sought from the city of New York that has been

certified pursuant to section 197-c of the [New York city] charter and any application for a zoning text amendment that has been certified pursuant to section 201 of the charter shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity of an entity with [a real property transaction or land use approval] an acquisition or disposition of real property or an application for approval sought pursuant to the provisions of section 195 of the charter, any application for approval sought from the city of New York that has been certified pursuant to section 197-c of the charter and any application for a zoning text amendment that has been certified pursuant to section 201 of the charter pursuant to [clause] clauses (ii) and (iii) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law; (iv) the provisions of this local law concerning franchises and concessions shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity[,] and persons with an interest in an entity which exceeds ten percent of the entity [and persons employed in a senior managerial capacity regarding an entity] with a city franchise or concession pursuant to clause (iv) of paragraph (a) of subdivision 18 of section 3-702 of

the code as added by section one of this local law; (v) [all of] the provisions of this local law concerning any bid or proposal for a franchise or concession, and the provisions regarding persons employed in a senior managerial capacity with respect to any entity with a city franchise or concession pursuant to clause (iv) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law, shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that such database [includes,] identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, and persons with an interest in an entity which exceeds ten percent of the entity that has submitted a bid or proposal seeking such a franchise or concession, and persons employed in a senior managerial capacity [of entities with] with respect to any entity holding such a franchise or concession or that has submitted a bid or a proposal for such a franchise or concession; (vi) [all of] the provisions of this local law concerning a recipient of a grant shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity [regarding an] with respect to any entity that is a recipient of a grant pursuant to clause (v) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law; (vii) [all of] the provisions of this local law



concerning a party to an economic development agreement shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity [regarding an] with respect to any entity that is an applicant for or a party to an economic development agreement pursuant to clause (vi) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law; (viii) [all of] the provisions of this local law concerning a contract for the investment of pension funds, including investments in a private equity firm and contracts with investment related consultants shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity [regarding an] with respect to any entity that is an applicant for or a party to a contract for the investment of pension funds, including investments in a private equity firm and contracts with investment related consultants pursuant to clause (vii) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law; and (ix) [all of] the provisions of this local law concerning lobbyists shall take effect thirty days after the campaign finance

board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies lobbyists; and shall be applicable to all receipts, expenditures, and public funds claims after such effective dates for elections held after such effective dates; provided that, upon enactment of this local law, the campaign finance board shall take all necessary steps, including but not limited to the promulgation of forms and rules, to ensure the prompt implementation of this local law upon its effective date. Notwithstanding any provision of law to the contrary, the campaign finance board and the department of information technology and telecommunication may certify any component of the doing business database enumerated in clauses (i) through [(viii)] (ix) of this section as complete when it has determined that each component identifies such persons with reasonable completeness and accuracy. Notwithstanding any provision of law to the contrary, immediately upon certification of each component of the doing business database pursuant to this section, the department of information technology and telecommunications shall provide to the [Mayor]mayor and the [Council]council an analysis of the steps taken to compile the component of the database certified and the campaign finance board shall provide to the [Mayor]mayor and the [Council]council an analysis of the steps taken to ensure and test for reasonable completeness and accuracy. Such report shall also demonstrate the process by which the department of information technology and telecommunications and the campaign finance board shall update the doing business database and ensure that names of persons no longer doing business with the city are removed. The deadline for certification of this section in relation to clauses (i), [and] (iv), and (ix) shall be six months from the effective date of this local law; the

deadline for certification of this section in relation to clauses (ii), (v), (vi), (vii) and (viii) shall be one year from the effective date of this local law; and the deadline for certification of this section in relation to clause (iii) shall be sixteen months from the effective date of this local law; provided, however, that any component of the doing business database that has not been certified on or before December 1, 2008 may not be certified until on or after November 30, 2009.

§[39] 38. With its 2009 post-election report, the campaign finance board shall submit a report to the council on the status of the doing business database. Such report shall contain the status of each of the components enumerated in clauses (i) through [(viii)] (ix) of section [thirty-three] thirty-seven of this local law and whether each such component has been certified, for those components that have not been certified, if any, what the status is of the development of such component of the database and the expected timeline for such component's certification. The campaign finance board shall provide the council and the mayor with recommendations, if any, for exempting certain types of transactions, applications or agreements from the definition of business dealings with the city as defined in section one of this local law. If such proposals are submitted by the board, and such proposals are accepted by the council, or if the council fails to take action on such proposals within sixty days, such proposals shall take effect. Rejection of such proposals by resolution, or action by the council on amendments to the definition of business dealings with the city different from those contained in such proposals shall constitute action on such proposals.

§26. Section forty of local law 34 for the year 2007 is renumbered section 39 and section forty-one of local law 34 for the year 2007 is renumbered and amended to read as follows:

[§41] §40. Sections three through seven, nine, ten, thirteen through [twenty, and twenty-two through thirty-three] thirty-six and thirty-nine of this local law shall take effect on January 1, 2008; provided, however that such sections shall apply only to elections held on or after such effective date and shall be applicable to all public funds claims for elections held on or after such effective date, regardless of whether the claim for public funds was submitted prior to the effective date.

§ 27. This local law shall take effect immediately.

Proposed Int. No. 651-A

By Council Member Felder (by request of the Mayor)

A Local Law to amend the administrative code of the city of New York, in relation to campaign finance.

*Be it enacted by the Council as follows:*

Section 1. Subdivisions 18 and 20 of section 3-702 of the administrative code of the city of New York, as added by local law number 34 for the year 2007, are amended to read as follows:

18. a. The term “business dealings with the city” shall mean (i) any contract (other than an emergency contract or a contract procured through publicly-advertised competitive sealed bidding) which is for the procurement of goods, [or] services or construction that is entered into or in effect with the city of New York or any agency or entity affiliated with the city of New York [(other than a contract procured through competitive sealed bidding, or one or more contracts with a single person or entity for the procurement of goods or services totaling not more than] and is valued at or above the dollar value [set forth] defined in [section 6-116.2(i)(3)(a)] subparagraph (a) of paragraph (3) of subdivision i of section 6-116.2 of the administrative code, or, [for construction totaling not more than] with respect to a contract for construction, at or above five hundred thousand dollars, or an emergency contract awarded pursuant to section 315 of the charter[]], and shall include any contract for the underwriting of the debt of the city of New York or any agency or entity affiliated with the city of New York and the retention of any bond counsel, disclosure counsel or underwriter’s counsel in connection therewith; or (ii) any acquisition or disposition of real property (other than a public auction or competitive sealed bid transaction or the acquisition of property pursuant to the

department of environmental protection watershed land acquisition program) with the city of New York or any agency or entity affiliated with the city of New York; or (iii) any application for approval sought from the city of New York pursuant to the provisions of section 195 of the charter, any application for approval sought from the city of New York that has been certified pursuant to the provisions of section 197-c of the charter, and any application for a zoning text amendment that has been certified pursuant to section 201 of the charter; provided, however, that for purposes of this clause, with respect to section 195 an applicant shall include the lessor of an office building or office space, and with respect to section 197-c an applicant shall include a designated developer or sponsor of a project for which a city agency or local development corporation is the applicant and provided, further, however, that owner-occupants of one, two and three family homes shall not be considered applicants pursuant to this clause; or (iv) [one or more concessions] any concession (other than [concessions] a concession awarded through publicly-advertised competitive sealed bid) or [franchises] any franchise from the city of New York or any agency or entity affiliated with the city of New York [with] which has an estimated [aggregate payments to the city of more than] annual value at or above the dollar value [set forth] defined in [section 6-116.2(i)(3)(a)] subparagraph (a) of paragraph (3) of subdivision i of section 6-116.2 of the administrative code [per fiscal year]; or (v) [one or more grants totaling not more than] any grant that is valued at or above the dollar value [set forth] defined in [section 6-116.2(i)(3)(a)] subparagraph (a) of paragraph (3) of subdivision i of section 6-116.2 of the administrative code, received from the city of New York or any agency or entity affiliated with the city of New York; or (vi) any economic development agreement entered into or in effect with the city of New York or

any agency or entity affiliated with the city of New York; or (vii) any contract for the investment of pension funds, including investments in a private equity firm and contracts with investment related consultants. In addition, for purposes of this chapter a lobbyist as defined in section 3-211 of this title shall be deemed to be engaged in business dealings with the city of New York during all periods covered by a registration statement. For purposes of clauses (i), (iv) and (v) of this subdivision, all contracts, concessions, franchises and grants that are five thousand dollars or less in value shall be excluded from any calculation as to whether a contract, concession, franchise or grant is a business dealing with the city. For purposes of clauses (ii) and (iii) of this subdivision, the department of city planning, in consultation with the board, may promulgate rules to require the submission by applicants to the city of information necessary to implement the requirements of subdivisions 1-a and 1-b of section 3-703 of this chapter as they relate to clauses (ii) and (iii) of paragraph (a) of this subdivision for purposes of inclusion in the doing business database established pursuant to subdivision [(20)] 20 of this section. [For purposes of this subdivision, actions, transactions, and agreements for the purpose of providing affordable housing pursuant to the Private Housing Finance Law or the General Municipal Law or any other city, state or federal program, including but not limited to actions, transactions and agreements for such purposes which involve land dispositions, loans, grants, real property tax exemptions, zoning bonuses, low income housing tax credits, rent subsidies, or agreements imposing limitations on the incomes of residents or on the rents or other charges to be paid by such residents, shall not constitute business dealings with the city of New York.] For purposes of this subdivision, “agency or entity affiliated with the city of New York” shall mean the city school district of the

city of New York and any public authority, public benefit corporation or not for profit corporation, the majority of whose board members are officials of the city of New York or are appointed by such officials. For purposes of this subdivision, the department of housing preservation and development shall promulgate rules setting forth which actions, transactions and agreements for the purpose of providing affordable housing shall constitute business dealings with the city of New York; provided, however, that such rules shall provide that only those actions, transactions and agreements for the purpose of providing affordable housing which involve the exercise of substantial discretion by one or more city officials shall constitute business dealings with the city of New York.

Notwithstanding any provision of this subdivision, a housing assistance payment contract between a landlord and the department of housing preservation and development or the New York city housing authority relating to the provision of rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, 42 USC 1437 et., seq., shall not constitute business dealings with the city of New York for the purposes of this subdivision.

b. Business dealings with the city as defined in this subdivision shall be [limited] as follows: for purposes of clause (i) of paragraph (a) of this subdivision, bids or proposals on contracts for the procurement of goods, services, or construction shall only constitute business dealings with the city of New York for the period from the later of the submission of the bid or proposal or the date of the public advertisement for the contract opportunity until twelve months after the date of such submission or advertisement, and contracts for the procurement of goods, services or construction shall only constitute business dealings with the city of New York during the term of such contract (or in the



case of purchase contracts for goods, from the date of such purchase) and for twelve months [after the end of such term] thereafter, provided, however that where such contract award is made from a line item appropriation and/or discretionary funds made by an elected official other than the mayor or the comptroller, such contract shall only constitute business dealings with the city from the date of adoption of the budget in which the appropriation of such contract is included until twelve months after the end of the term of such contract; for purposes of clause (ii) of paragraph a of this subdivision, leases in which the city of New York is the proposed lessee[,] shall only constitute business dealings with the city from the date the application for acquisition is filed pursuant to section 195 or the date of the certification of such application pursuant to section 197-c to a period of one year after the commencement of the lease term or after the commencement of any renewal and, where the city or any city affiliated entity is disposing of any real property interest, shall only constitute business dealings with the city from the date of the submission of a proposal and during the term of any agreement and one year after; for purposes of clause (iii) of paragraph (a) of this subdivision, applications for approval sought from the city of New York pursuant to the provisions of sections 197-c or 201 of the charter, except for applications for leases as described in clause (ii), shall only constitute business [dealing] dealings with the city from the date of the certification of such application to the date that is one hundred twenty days after the date of filing by the council with the mayor of its action pursuant to subdivision e of section 197-d of the charter or, in the case of a decision of the city planning commission for which the council takes no action pursuant to paragraph (3) of subdivision (b) of section 197-d of the charter, the date which is twenty days following the filing of such

decision with the council pursuant to subdivision a of section 197-d of the charter, provided, however, that in the case of a disapproval of a council action by the mayor pursuant to subdivision e of section 197-d of the charter, such date shall be one hundred twenty days after expiration of the ten day period for council override pursuant to such section; for purposes of clause (iv) of paragraph (a) of this subdivision, bids or proposals for franchises and concessions shall only constitute business dealings with the city of New York for the period from the submission of the bid or proposal until twelve months after the date of such submission, concessions shall only constitute business dealings with the city of New York during the term of such concession and for twelve months after the end of such term, and franchises shall only constitute business dealings with the city of New York for the period of one year after the commencement of the term of the franchise or after the commencement of any renewal; for purposes of clause (v) of paragraph (a) of this subdivision, grants shall constitute business dealings with the city of New York for one year after the grant is made; for purposes of clause (vi) of paragraph (a) of this subdivision, economic development agreements shall constitute business dealings with the city from the submission of an application for such agreement and during the term of such agreement and for one year after the end of such term; and for purposes of clause (vii) of paragraph (a) of this subdivision, contracts for the investment of pension funds, including the investments in a private equity firm and contracts with investment related consultants shall constitute business dealings with the city from the time of presentation of investment opportunity or the submission of a proposal, whichever is earlier, and during the term of such contract and for twelve months after the end of such term.

c. Notwithstanding anything in this subdivision, a person, as defined by subdivision 20 of section 3-702, who has submitted bids or proposals on contracts for the procurement of goods, services or construction or who has submitted bids or proposals for franchises or concessions that are no longer being considered for an award or a person who for any other reason believes he or she should not be on the database may apply to the city chief procurement officer or other person designated by the mayor for removal from the doing business database and shall be removed from the database upon a determination that said person should not be included in the database. The city chief procurement officer may promulgate rules for a process by which a person, as defined by subdivision 20 of section 3-702, may apply to the city chief procurement officer for a waiver from inclusion in the doing business database as defined by such subdivision in instances in which such person is providing essential goods, services or construction such as those necessary for security or other essential government operations. Such rules shall provide that the city chief procurement officer shall transmit to the board a copy of any application for a waiver and any such waiver may not be granted prior to the expiration of ten days from the date such application is received by the board. Such rules shall also provide that any such waiver may be granted only after substantial efforts have been made by the city chief procurement officer to obtain the information required by this law. Such rules shall also provide that the city chief procurement officer may grant the waiver only upon a finding that it is in the best interests of the city, which finding shall only be made upon a determination that (i) there is a compelling need to obtain such essential goods, services or construction from the person seeking the exemption and (ii) no other reasonable alternative exists in light of such considerations as cost, uniqueness and the

critical nature of such goods, services or construction to the accomplishment of the purchasing agency's mission. Such rules may also provide that a waiver may be granted when a person is doing business with the city by virtue of the city's exercise of its powers of eminent domain. Any grant of a waiver shall be posted on the city's and the board's website in locations that are accessible by the public.

d. A person, as defined by subdivision 20 of section 3-702, shall be considered to have business dealings with the city as of the date the person's name is entered in the doing business database, as such date is indicated in such database, or the date the person began doing business with the city, as such date is indicated in such database, whichever is earlier, except that the date on which the person is considered doing business with the city shall not be earlier than thirty days before the date the person's name is entered into such database.

20. The term "doing business database" means a computerized database accessible to the board that contains the names of persons who have business dealings with the city; provided, however, that for purposes of this chapter the doing business database shall not be required to contain the names of any person whose business dealings with the city are solely of a type for which the board has not certified that such database includes the names of those persons engaged in such type of business dealings with the city. Such database shall be developed, maintained and updated by the office of the mayor in a manner so as to ensure its reasonable accuracy and completeness; provided, however, that in no event shall such database be updated less frequently than once a month. Such computerized database shall contain a function to enable members of the public to determine if a given person is in the database because such person has

business dealings with the city. For purposes of this definition, the term “person” shall include an entity that has business dealings with the city, any chief executive officer, chief financial officer and/or chief operating officer of such entity or persons serving in an equivalent capacity, any person employed in a senior managerial capacity regarding such entity, or any person with an interest in such entity which exceeds ten percent of the entity, provided, however, that “entity” for purposes of this definition shall not include a neighborhood, community or similar association consisting of local residents or homeowners organized on a non-profit basis where such association is the applicant pursuant to subsection (3) of subdivision (a) of section 197-c of the charter or pursuant to section 201 of the charter or is a parent company or an affiliated company of an entity. For purposes of this subdivision, the phrase “senior managerial capacity” shall mean a high level supervisory capacity, either by virtue of title or duties, in which substantial discretion and oversight is exercised over the solicitation, letting or administration of [any contract, franchise or concession, grant or economic development agreement with the city or application for any land use approval from the city] business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements and applications for land use approvals.

§2. Subdivisions 1-a and 1-b of section 3-703 of the administrative code of the city of New York, as added by local law 34 for the year 2007, are amended to read as follows:

1-a. Notwithstanding any inconsistent provision of this section, a participating candidate or his or her principal committee may not accept, either directly or by transfer, [a] any contribution or contributions for a covered election in which he or she is a

participating candidate from a natural person who has business dealings with the city, as that term is defined in subdivision eighteen of section 3-702 of this chapter, if the aggregate of such contributions to such candidate from such person for [such election does not exceed] all covered elections in the same calendar year exceeds: (i) for the office of mayor, public advocate or comptroller four hundred dollars; (ii) for borough president three hundred twenty dollars; and (iii) for member of the city council two hundred fifty dollars. Any contribution made pursuant to this section shall not be a matchable contribution. For purposes of this subdivision, “person” shall include any chief executive officer, chief financial officer and/or chief operating officer of an entity which has business dealings with the city, any person employed in a senior managerial capacity regarding such an entity, or any person with an interest in such an entity which exceeds ten percent of the entity. For purposes of this subdivision, the phrase “senior managerial capacity” shall mean a high level supervisory capacity, either by virtue of title or duties, in which substantial discretion and oversight is exercised over the solicitation, letting or administration of [any contract, franchise, or concession, grant or economic development agreement with the city or application for any land use approval from the city] business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements and applications for land use approvals. Notwithstanding any provision of this subdivision, the limitations on contributions contained herein shall not apply to any contribution made by a natural person who has business dealings with the city to a participating candidate or his or her principal committee where such participating candidate is the contributor, or where such

participating candidate is the contributor's parent, spouse, domestic partner, sibling, child, grandchild, aunt, uncle, cousin, niece or nephew by blood or by marriage.

1-b. Individuals and organizations having business dealings with the city of New York. a. Each participating candidate and his or her principal committee shall inquire of every individual or entity making, a contribution, loan, guarantee or other security for such loan in excess of the amounts set forth in subdivision 1-a of section 3-703, through a question, in a form prescribed by the campaign finance board, as to whether such individual, corporation, partnership, political committee, employee organization or other entity has business dealings with the city, as that term is defined in this chapter, and, if so, the name of the agency or entity with which such business dealings are or were carried on and the appropriate type or category of such business dealings. Such form shall contain in prominent typeface and in a prominent location the statement "If a contributor has business dealings with the City as defined in the campaign finance act, such contributor may contribute only up to two hundred fifty dollars for city council, three hundred twenty dollars for borough president and four hundred dollars for mayor, comptroller or public advocate." Upon receipt of the response to such inquiry (including any failure to respond), the principal committee shall keep a copy in its records and shall report each contribution to the board on the next applicable filing deadline in accordance with the board's disclosure schedule. The board shall check each contribution against the doing business database and shall notify the principal committee within twenty days of the reporting of such contribution if a contribution exceeding the doing business contribution limitation set forth in subdivision 1-a of section 3-703 is subject to such limitations of this subchapter or if a contribution is not matchable pursuant to such

subdivision. Notwithstanding any provision in this subdivision, in the six weeks preceding the covered election the board shall provide such notification to the principal or authorized committee within three business days of the reporting of such contribution to the board in accordance with applicable reporting deadlines. If the board fails to notify the principal committee that a contribution is in excess of the limitations set forth in subdivision 1-a of section 3-703 of this chapter in accordance with this subdivision, any such contribution shall be deemed valid for purposes of such limitation, provided, however, that no such contribution shall be matchable. Such principal committee shall have twenty days from the date of any such notification to return the amount of any contribution in excess of the limitations set forth in subdivision 1-a of section 3-703 to the contributor. No violation shall issue and no penalty shall be imposed where such excess amount is postmarked or delivered within twenty days of such notification by the board and the board shall not designate a candidate as having accepted a contribution in excess of such limitations where such excess has been returned in accordance with the time limitations set forth herein. Failure to return such excess amount in accordance with the provisions herein shall not result in the board withholding public funds for which the participating candidate's principal committee is otherwise eligible pursuant to section 3-705 of this chapter; provided, however, that the board may deduct an amount equal to the total unreturned contributions in excess of the limitations set forth in subdivision 1-a of section 3-703 of this chapter from such payment of public funds. For purposes of this section, "individual" shall include any chief executive officer, chief financial officer, and/or chief operating officer of an entity or persons serving in an equivalent capacity, any person in a senior managerial capacity regarding an entity, or any person with an



interest in an entity, which exceeds ten percent of the entity. For purposes of this subdivision, the phrase “senior managerial capacity” shall mean a high level supervisory capacity, either by virtue of title or duties, in which substantial discretion and oversight is exercised over the solicitation, letting or administration of [any contract, franchise, or concession, grant or economic development agreement with the city or application for any land use approval from the city] business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements, and applications for land use approvals. Notwithstanding any other provision of this section, no participating candidate shall be liable for any fine or penalty for the failure of any contributor to respond to any such request or for any erroneous response.

§3. Subparagraph (i) of paragraph c of subdivision 1 of section 3-703 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

(i) the tenth day of June in the year of the covered election, or such other later date as the board shall provide, provided, however, that any candidate who files such written certification prior to such date shall be permitted to rescind such certification in writing on or before such date;

§4. Subdivision 10 of section 3-705 of the administrative code of the city of New York, as added by local law 34 for the year 2007, are amended to read as follows:

10. [Participating candidates] A participating candidate who [lose] loses in the primary election but [remain] remains on the ballot for the general election must certify to the board before receiving public funds that [they] he or she will actively campaign for office; [by including,] such campaign activity shall include, but not be limited to, raising

and spending funds, seeking endorsements, and broadly soliciting votes [before receiving public funds].

§5. Subdivision 4 of section 3-705 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

4. The campaign finance board shall make possible payment within four business days after receipt of reports of matchable contributions, or as soon thereafter as is practicable, but not earlier than the earliest dates for making such payments as provided in subdivisions five and six of section 3-709; provided, however, that the board shall withhold up to five percent of all public funds payments to participating candidates until the final pre-election payment for any given election. The board shall schedule a minimum of three payment dates within the thirty days prior to a covered election. For purposes of such payment dates, the board shall provide each candidate with a written determination specifying the basis for any non-payment. The board shall provide candidates with a process by which they may immediately upon receipt of such determination petition the board for reconsideration of any such non-payment and such reconsideration shall occur within five business days of the filing of such petition. In the event that the board denies such petition then it shall immediately notify the candidate of [its] his or her right to [appeal to appeal] bring a special proceeding pursuant to article 78 of the civil practice law and rules.

§6. Subparagraph (i) of paragraph (b) of subdivision 5 of section 3-709.5 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, and subdivision 12 of section 3-709.5 of the administrative code of the city of New York, as added by local law 34 for the year 2007, are amended to read as follows:

(b)(i) Except as otherwise provided in subparagraph (ii) below, each debate for a primary, general or special election shall include only those participating candidates or limited participating candidates the sponsor of each such debate has determined meet the non-partisan, objective, and non-discriminatory criteria set forth in any agreement between the sponsor and the board; provided, however, that the criteria for the first debate for a primary, general, or special election shall provide, among other criteria, (A) that a participating candidate shall be eligible to participate in such debate if he or she has, by the last filing date prior to such debate, (I) spent, contracted, or obligated to spend, and (II) received in contributions, an amount equal to or more than twenty percent of the threshold for eligibility for public funding applicable to participating candidates contained in subdivision two of section 3-703, and (B) that a limited participating candidate shall be eligible to participate in such debate if he or she has, by the last filing date prior to such debate, spent, contracted, or obligated to spend, an amount equal to or more than twenty percent of the threshold for eligibility for public funding applicable to participating candidates seeking the office for which such debate is being held contained in subdivision two of section 3-703; provided, however, that for the purpose of determining whether a candidate has met the financial criteria to be eligible to participate in such debate, only contributions raised and spent in compliance with the act shall be used to determine whether the candidate has raised and spent twenty percent of the threshold for eligibility for public funding applicable to participating candidates contained in subdivision two of section 3-703; provided, further, that the second debate for a primary, general, or special election shall include only those participating candidates or limited participating candidates who the sponsor has also determined are leading

contenders on the basis of additional non-partisan, objective, and non-discriminatory criteria set forth in any agreement between the sponsor and the board. Nothing in this provision is intended to limit the debates to the two major political parties.

12. The city of New York shall indemnify each sponsor for any liability of such sponsor arising out of the acts or omissions of the city of New York in connection with the selection of candidates for participation in any debate[,] held pursuant to this section 3-709.5.

§7. Paragraph b of subdivision 2 of section 3-710 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

b. If the board determines that any portion of the payment made to a principal committee of a participating candidate from the fund was used for purposes other than qualified campaign expenditures, it shall notify such candidate and committee of the amount so disqualified and such candidate and committee shall pay to the board an amount equal to such disqualified amount; provided, however, that in considering whether or not a participating candidate shall be required to pay to the board such amount or an ~~amountless~~ amount less than the entire disqualified amount, the board shall act in accordance with the following: (i) where credible documentation supporting each qualified campaign expenditure exists but is incomplete, the board shall not impose such liability for such expenditure; and (ii) where there is an absence of credible documentation for each [qualified\_campaign] qualified campaign expenditure, the board may impose liability upon a showing that such absence of credible documentation for such expenditure arose from a lack of adequate controls including, but not limited to

trained staff, internal procedures to follow published board guidelines and procedures to follow standard financial controls.

§8. Subdivision 19 of section 3-702 of the administrative code of the city of New York, as added by section 17 of local law 34 for the year 2007, is renumbered as subdivision 21 and amended to read as follows:

[19] 21. a. For purposes of campaigns that accept public funds pursuant to section 3-705 of this chapter, the terms “expenditure” and “campaign expenditure” shall include all payments and liabilities in furtherance of a political campaign for covered office, including, but not limited to, all qualified campaign expenditures and expenditures subject to or exempt from the expenditure limitations of this chapter [pursuant to sections 3-706 and 3-712. In addition, there]. There shall be a rebuttable presumption that the following expenditures are in furtherance of a political campaign for elective office; provided, however, that the presumptions contained in this subdivision shall not apply to an expenditure [made when the expenditure is] to a person or entity associated with the candidate [making such expenditure or on whose behalf such candidate’s committee made such expenditure]; and provided further that in rebutting any such presumption the campaign finance board may consider factors including the timing of the expenditure and whether the campaign had an unusually high amount of spending on a particular type of expenditure. For purposes of this subdivision a person or entity associated with a candidate [includes] shall include the candidate’s spouse, domestic partner, child, parent, or sibling[,] or a person or entity with whom or with which the candidate has a business or other financial relationship:

1. Contributions to charitable organizations designated as 501(c)(3) organizations pursuant to the internal revenue code;

2. Contributions to candidates and political committees subject to the provisions of section 3-705(8);

3. Community events including, but not limited to, events hosted by civic [associations] and neighborhood [association] associations; provided, however, that this presumption shall not apply to sporting events, concerts, theater or other entertainment events which shall be subject to the provisions of paragraph b;

4. Ballot proposal advocacy where there are indicia that the expenditure relates to the candidate;

5. Travel related solely and exclusively to a political campaign for a covered office or the holding of public office; provided, however, that any travel not related solely and exclusively to a political campaign or the holding of public office shall be subject to the provisions of paragraph b;

6. Legal defense of a non-criminal matter arising out of a political campaign;

7. Computer hardware, software and other office technology purchased more than two weeks before the date of a primary election, in the case of a candidate who is opposed in the primary election, or two weeks before the date of a general election, in the case of a candidate who was not opposed in a primary election;

8. A post-election event for staff, volunteers and/or supporters held within thirty days of the election;

9. Payment of non-criminal penalties or fines arising out of a political campaign;

10. Costs incurred in demonstrating eligibility for the ballot[,] or public funds payments or defending against a claim that public funds must be repaid; and

11. Food and beverages provided to campaign workers and volunteers[; and].

b. Campaign funds shall not be converted by any person to a personal use which is unrelated to a political campaign. Expenditures not in furtherance of a political campaign for elective office include the following:

1. Expenditures to defray the normal living expenses of the candidate, immediate family of the candidate[,] or any other individual except for the provision of such expenses for professional staff as part of a compensation package;

2. Any residential[,] or household items, supplies or expenditures;

3. Clothing, haircuts and other personal grooming;

4. Funeral, cremation[,] or burial expenses including any expenses related to a death within a candidate's or officeholder's family;

5. Automobile purchases;

6. Tuition payments[,] and childcare costs;

7. Dues, fees[,] or gratuities at a country club, health club, recreational facility or other nonpolitical organization unless part of a specific fundraising event that takes place on the organization's premises;

8. Admission to a sporting event, theater, concert or other entertainment event not part of a specific campaign activity;

9. Expenditures for non-campaign related travel, food, drink or entertainment; if a candidate uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign activities, the incremental expenses

that result from the personal activities shall be considered for personal use unless the [person] candidate benefiting from the use reimburses the campaign account within thirty days for the full amount of the incremental expenses; and

10. Gifts, except for brochures, buttons, signs and other campaign materials and token gifts valued at not more than fifty dollars that are for the purpose of expressing gratitude, condolences or congratulations.

§9. Paragraph (l) of subdivision 1 of section 3-703 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

(l) not accept and his or her principal committee or authorized committees must not accept, either directly or by transfer, any contribution, loan, guarantee, or other security for such loan from any corporation, limited liability company, limited liability partnership[,], or partnership, other than a corporation, limited liability company, limited liability partnership[,], or partnership that is a political committee as defined in subdivision eleven of section 3-702 of this chapter, for all covered elections held in the same calendar year in which he or she is a participating or non-participating candidate, provided, however, that where a contribution is from a contributor whose name is followed by a professional designation including but not limited to "M.D.", "Esq." and "C.P.A." the board shall not treat such contribution as coming from a corporation, limited liability company [or], limited liability partnership or partnership in the absence of further indicia that such contribution is from such an entity;



§10. Paragraph (j) of subdivision 2 of section 3-704 of the administrative code of the city of New York, as added by local law 34 for the year 2007, is amended to read as follows:

(j) payment of any penalty or fine imposed pursuant to federal, state or local law;  
or

§11. Paragraph (a) of subdivision 2 of section 3-705 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

(a) If the threshold for eligibility is met, the participating candidate's principal committee shall receive payment for qualified campaign expenditures of six dollars for each one dollar of matchable contributions, up to one thousand fifty dollars in public funds per contributor (or up to five hundred [twenty-five] twenty-two dollars in public funds per contributor in the case of a special election), obtained and reported to the campaign finance board in accordance with the provisions of this chapter.

§12. Subdivision 7 of section 3-705 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

7. Notwithstanding any provision of this section to the contrary, the amount of public funds payable a participating candidate on the ballot in any covered election shall not exceed one quarter of the maximum public funds payment otherwise applicable under subdivision two of this section, unless:

[(b)](a) the participating candidate is opposed by a candidate and the board has determined that such other candidate and his or her authorized committees have spent or contracted or have obligated to spend, or received in loans or contributions, or both, an

amount which, in the aggregate, exceeds one-fifth of the applicable expenditure limit for such office fixed by subdivision one of section 3-706 of this chapter for participating candidates; or

[(c)](b) the participating candidate has submitted a certified signed statement attesting to the need and stating the reason for additional public funds in such election, in which case the board shall publish such statement at the time such additional public funds are paid, including on the board's internet website. Such statement must certify that (i) one or more of the following conditions [applies and provide documentation in support of such condition] apply and (ii) [that] such condition or conditions reasonably [demonstrates] demonstrate the need for such public funds[.], and the participating candidate must provide documentation demonstrating the existence of such condition or conditions:

(1) the participating candidate is opposed by (i) a non-participating candidate or (ii) a limited participating candidate, and provides a factual basis with supporting documentation of such candidate's ability to self finance;

(2) the participating candidate is opposed by a candidate who has received (i) the endorsement of a citywide or statewide elected official or a federal elected official representing all or a portion of the area covered by the election; (ii) two or more endorsements from other city elected officials who represent all or a part of the area covered by the election; or (iii) endorsements of one or more membership organizations with a membership of over 250 members;

(3) the participating candidate is opposed by a candidate who has had significant media exposure in the twelve months preceding the election. For purposes of

this paragraph, significant media exposure shall mean appearance of the opponent or his or her name [in] on television[,], or radio in the area of the covered election or in print media in general circulation in the area of the covered election at least twelve times in the year preceding the covered election; provided, however, that the listing of names of candidates or potential candidates for a covered election without additional information concerning the opponent shall not constitute an appearance for purposes of this paragraph;

(4) the participating candidate is opposed by a candidate who has received twenty-five percent or more of the vote in an election for public office in an area encompassing all or part of the area that is the subject of the current election in the last eight years preceding the election;

(5) the participating candidate is opposed by a candidate whose name is substantially similar to the candidate's so as to result in confusion among voters, as determined by the board;

(6) the participating candidate in a city council or borough-wide race is opposed by a candidate who is a chairman or president of a community board or district manager of a community board; or

(7) the participating candidate is opposed by a candidate whose spouse, domestic partner, sibling, parent or child [hold or have held] holds or has held elective office in an area encompassing all or part of the area [that is the subject] of the [current] covered election in the past ten years.

The board shall be authorized to verify the truthfulness of any certified statement submitted pursuant to this paragraph and of any supporting documentation and

shall post such [certifications] certified statements and supporting documentation on its website.

[(d)](c) the participating candidate is opposed in a primary or special election for an office for which no incumbent is seeking re-election.

If any of the conditions described in paragraphs (a), (b), or (c) [or (d)] occur in such election, the board shall pay any and all additional public funds due to the participating candidate up to the maximum total payment applicable in such election under subdivisions two or six of this section or subdivision three of section 3-706 of this chapter.

§13. Paragraph (a) of subdivision 1 of section 3-706 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

(a) Except as provided in paragraph (b) of this subdivision, in each primary election, in each special election to fill a vacancy, and in each general election, expenditures by a participating candidate or a limited participating candidate and his or her principal committee for one of the following offices shall not exceed the following amounts:

mayor:	[\$6,157,600] <u>\$6,158,000</u>
public advocate or comptroller:	[\$3,849,575] <u>\$3,850,000</u>
borough president:	[\$1,385,675] <u>\$1,386,000</u>
member of the city council:	[\$161,250] <u>\$161,000</u>

§14. Subdivision 2 of section 3-706 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

2. The following limitations apply to all expenditures made by a participating or limited participating candidate and his or her principal committee in the three calendar years preceding the year of the election for which such candidate chooses to file a certification as a participating or limited participating candidate pursuant to this chapter and to expenditures made at any time prior to such date for services, materials, facilities, advertising or other things of value received, rendered, published, distributed or broadcast in such calendar years. Such expenditures by a participating or limited participating candidate for one of the following offices and his or her principal committee shall not exceed the following amounts:

mayor, public advocate or comptroller:      [\$290,250] \$290,000

borough president:      \$129,000

member of the city council:      \$43,000

§15. Subdivision 1 of section 3-710 of chapter 7 of title 3 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

1. The campaign finance board is hereby empowered to audit and examine all matters relating to the performance of its functions and any other matter relating to the proper administration of this chapter and of chapter 8 of title 3 of this code. The board shall conduct its campaign audits in accordance with generally accepted government auditing standards, and shall [issue] promulgate rules regarding what documentation is sufficient in demonstrating financial activity. These audit and examination powers extend to all participating candidates, limited participating candidates, and non-participating candidates, and the principal and authorized committees of all participating, limited

participating, and non-participating candidates, provided that:

a. Any draft audit, the subject of which is a participating, limited participating[,] or non-participating candidate, or the principal and/or authorized committees of any participating, limited participating[,] or non-participating candidate shall be completed within (i) eight months after the submission of the final disclosure report for the covered election for city council races and borough-wide races[;], and (ii) ten months after the submission of the final disclosure report for the covered election for citywide races, unless the subject of such audit consents in writing to a longer period of time;

b. The campaign finance board shall provide each candidate a final audit, which shall contain the final resolution of all issues raised in the draft audit; such final audit shall be provided to the candidate, where such candidate or such candidate's campaign manager or treasurer has completed audit training provided by the board, within (i) [within] fourteen months after the submission of the final disclosure report for the covered election, for city council races and borough-wide races[;], and (ii) sixteen months after the submission of the final disclosure report for the covered election for citywide races, unless the subject of such audit consents in writing to a longer period of time. Where such candidate or such candidate's campaign manager or treasurer has not completed audit training provided by the campaign finance board, such final audit shall be provided to such candidate within (i) [within] sixteen months after the submission of the final disclosure report for the covered election, for city council races and borough-wide races[;], and (ii) eighteen months after the submission of the final disclosure report for the covered election for citywide races, unless the subject of such audit consents in writing to a longer period of time. Provided, however, that where the issuance of such

final audit is preceded by a notice of violations and recommended penalties and/or a notice of repayment of public funds, such notice or notices shall include all potential penalties and/or repayment obligations and a notice of a candidate's right to a hearing pursuant to section 3-710.5 or section 3-710(4) of this chapter and shall be provided to the candidate according to the deadlines applicable to final audits as set forth in this paragraph.

c. Any advice provided by board staff to a participating, limited participating, or non-participating [candidates] candidate with regard to an action shall be presumptive evidence that such action, if taken in reliance on such advice, should not be subject to a penalty or repayment obligation where such candidate[, ] or such candidate's committee has confirmed such advice in a writing to such board staff by registered or certified mail to the correct address, or by electronic or facsimile transmission with evidence of receipt, [that describes] describing the action to be taken pursuant to the advice given and the board or its staff has not responded to such written confirmation within seven business days disavowing or altering such advice, provided that the board's response shall be by registered or certified mail to the correct address, or by electronic or facsimile transmission with evidence of receipt.

d. Notwithstanding the provisions of paragraphs a and b of this [section] subdivision, if a committee has failed to respond to a request for information made by board auditors during the post-election audit process, the time period for completing the draft and final audits shall be tolled and extended by the number of days by which the committee has exceeded the original deadline for a response, provided that the committee has received timely written notice of: [(a)](i) the original deadline to provide the

information, which shall not have been less than thirty days from the date such information was requested[.]; and [(b)](ii) the commencement of the tolling period pursuant to this section. If a committee has responded to a request for information made by board auditors but such response is inadequate, the time period for completing the draft and final audits shall be tolled and extended by the number of days until an adequate response is provided, provided that the committee has received timely written notice of: [(a)](i) the original deadline to provide the information, which shall not have been less than thirty days from the date such information was requested[.]; [(b)](ii) the commencement of the tolling period pursuant to this section; and [(c)](iii) the detailed reasons why the original response was inadequate.

e. Notwithstanding any provision of law to the contrary, the deadlines provided in [subdivisions] paragraphs a and b of this [section] subdivision for the completion of draft and final audits shall not apply in cases where the audit raises issues involving potential campaign-related fraud, potential other criminal activity, or activity that may constitute a breach of certification pursuant to rules of the board[,], or potential significant violations of the limits set forth in section 3-706.

f. Notwithstanding any provision of the law to the contrary, the deadlines provided in [subdivisions] paragraphs a and b of this [section] subdivision for the completion of draft and final audits shall not apply in the event that board operations are interrupted due to a catastrophic emergency such as a natural disaster or criminal event, provided that once board operations resume, the board shall within two weeks announce new deadlines for the completion of draft and final audits consistent with [provisions] paragraphs a and b.



§16. Paragraph (c) of subdivision 2 of section 3-710 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

2. (c)[ (i)] If the total of contributions, other receipts, and payments from the fund received by a participating candidate and his or her principal committee exceed the total campaign expenditures of such candidate and committee for all covered elections held in the same calendar year or for a special election to fill a vacancy such candidate and committee shall use such excess funds to reimburse the fund for payments received by such committee from the fund during such calendar year or for such special election. No such excess funds shall be used for any other purpose, unless the total amount of the payments received from the fund by the principal committee has been repaid.

§17. Subdivision 4 of section 3-710 of the administrative code of the city of New York, as added by local law 34 for the year 2007, is amended to read as follows:

4. ~~[(a)]~~ No claim for the repayment of public funds shall be made against any candidate or committee without written notice to such candidate or committee, issued in a timely manner pursuant to [the] all of the requirements of subdivision one of this section, and [a reasonable] an opportunity to appear before the board. Any such repayment claim shall be based on a final determination [to be] issued by the board following an adjudication before the board consistent with the procedures set forth in section 1046 of the charter unless such procedures are waived by the candidate or principal committee. Such final determination shall be included in and made part of the final audit which shall be issued within thirty days of such determination[;].

§18. Section 3-710.5 of the administrative code of the city of New York, as amended by local law 34 for the year 2007, is amended to read as follows:

§ 3-710.5 Findings of violation or infraction; adjudications; [or] final determinations. (i) The board shall determine whether a participating candidate, his or her principal committee, principal committee treasurer or any other agent of a participating candidate has committed a violation or infraction of any provision of this chapter or the rules promulgated hereunder, for which the board may assess a civil penalty pursuant to section 3-711 of this chapter. The board shall promulgate rules defining infractions, and such definitions shall include, but not be limited to, failures to comply with the provisions of this chapter or the rules promulgated hereunder that are limited and non-repetitive.

(ii)(a) The board shall give written notice and the opportunity to appear before the board to any participating, limited participating or non-participating candidate, his or her principal committee, authorized committee, committee treasurer or any other agent of such candidate, if the board has reason to believe that such has committed a violation or infraction before assessing any penalty for such action. Any such written notice of alleged violations shall be issued in a timely manner pursuant to all of the requirements of subdivision one of section 3-710 and shall precede the issuance of the final audit required pursuant to subdivision one of section 3-710. In the case of a written notice issued prior to the date of a covered election, or after the date of a covered election in[ ]the case of a notice regarding an alleged failure to respond to a request for audit documentation, such notice may be issued prior to the issuance of a draft audit. Alleged violations and proposed penalties shall be subject to resolution by

adjudication before the board consistent with the procedures of section 1046 of the charter, unless such procedures are waived by the candidate or principal committee; provided, however, that in the case of adjudications conducted prior to the date of a covered election, the board shall use the procedures of section 1046 of the charter only to the extent practicable, given the expedited nature of such pre-election adjudications. The board shall issue a final determination within thirty days of the conclusion of the adjudication proceeding.

(b) The board shall include in every final determination: (i) notice of the [respondents'] respondent's right to bring a special proceeding challenging the board's final determination in New York State supreme court [brought] pursuant to article 78 of the civil practice law and rules; and (ii) notice of the commencement of the four-month period during which such a special proceeding may be brought pursuant to article 2 of the civil practice law and rules.

§19. Subdivision 4 of section 3-711 of the administrative code of the city of New York, as added by local law 34 for the year 2007, is amended to read as follows:

4. Notwithstanding any provision of law to the contrary, any participating or limited participating candidate and his or her principal committee or any non-participating candidate and his or her authorized committees or any other person who [commit] commits any violation of this chapter or any rules promulgated hereunder and who [take] takes all steps necessary to correct such violation prior to receiving written notice from the board of the existence of the potential violation [pursuant to section 3-710.5] shall not be subject to any penalty for such violation.

§20. Section 3-720 of the administrative code of the city of New York, as added by local law 34 for the year 2007, is amended to read as follows:

§3-720. Tolling of time for notice of alleged violations [or penalties.] and/or notice of repayment of public funds. If a committee has failed to respond to a request for information made by board auditors or has inadequately responded during the post-election audit process and the board has satisfied the provisions of subdivision 1 of section 3-710, the time period for serving notice shall be tolled and extended by the number of days by which the committee has exceeded the original deadline for a response, provided that the committee has received timely written notice of: (a) the original deadline to provide the information, which shall not have been less than thirty days from the date such information was requested, and (b) the commencement of the tolling period pursuant to this section.

§21. Paragraph (d) of subdivision 2 of section 3-801 of the administrative code of the city of New York, as added by local law 34 for the year 2007, is amended to read as follows:

(d) not accept any donation or donations of money, goods, or services from any corporation, limited liability company, limited liability partnership or partnership not permitted to contribute pursuant to paragraph (l) of subdivision 1 of section 3-703 or from any person whose name appears in the doing business database as of the date of such donation; provided, however, that this limitation on donations shall not apply to any donation to a transition or inauguration entity authorized pursuant to subdivision one of this section made by a natural person who has business dealings with the city [to a transition or inaugural committee] where such donation is from the candidate-elect[,] or

from the candidate-elect's parent, spouse, domestic partner, sibling, child, grandchild, aunt, uncle, cousin, niece or nephew by blood or by marriage.

§22. Subparagraph (iii) of paragraph a of subdivision 3 of section 3-706 of the administrative code of the city of New York, as added by local law 34 for the year 2007, is amended to read as follows:

(iii) [with regard to contributions raised on or] for elections occurring after January first, two thousand eight for elections occurring after such date, the campaign finance board shall promulgate rules to provide that the principal committees of such participating candidates shall receive payment for qualified campaign expenditures that will provide the highest allowable matchable contribution to be matched by an amount up to one thousand two hundred fifty dollars in public funds per contributor (or up to six hundred twenty five dollars in public funds per contributor in the case of special election); provided, however, that (A) participating candidates in a run-[ ]off election shall receive public funds for such election pursuant to subdivision five of section 3-705 and shall not receive any additional public funds pursuant to this section, and (B) in no case shall a principal committee receive in public funds an amount exceeding two-thirds of the expenditure limitation [provide] provided for such office in subdivision one of this section.

§23. Subparagraph (iii) of paragraph b of subdivision 3 of section 3-706 of the administrative code of the city of New York, as added by local law number 34 for the year 2007, is to read as follows:

(iii) [with regard to contributions raised on or] for elections occurring after January first, two thousand eight for elections occurring after such date, the campaign

finance board shall promulgate rules to provide that the principal committees of such participating candidates shall receive payment for qualified campaign expenditures that will provide the highest allowable matchable contribution to be matched by an amount up to one thousand five hundred dollars in public funds per contributor (or up to seven hundred fifty dollars in public funds per contributor in the case of special election); provided, however, that (A) participating candidates in a run-[ ]off election shall receive public funds for such election pursuant to subdivision five of section 3-705 and shall not receive any additional public funds pursuant to this section, and (B) in no case shall a principal committee receive in public funds an amount exceeding [two-thirds] one hundred twenty-five percent of the expenditure limitation [provide]provided for such office in subdivision one of this section.

§24. Paragraph (a) of subdivision 2 of section 3-703 of the administrative code of the city of New York, as amended by local law 58 of the year 2004, is amended to read as follows:

(a) The threshold for eligibility for public funding for participating candidates in a primary or general election, or special election to fill a vacancy, shall be in the case of:

(i) mayor, not less than two hundred fifty thousand dollars in matchable contributions comprised of sums up to [two hundred fifty]one hundred seventy-five dollars per contributor including at least one thousand matchable contributions of ten dollars or more;

(ii) public advocate and comptroller, not less than one hundred twenty-five thousand dollars in matchable contributions comprised of sums of up to [two hundred

fifty]one hundred seventy-five dollars per contributor including at least five hundred matchable contributions of ten dollars or more;

(iii) borough president, an amount equal to the number of persons living in such borough as determined by the last census multiplied by two cents in matchable contributions comprised of sums of up to [two hundred fifty]one hundred seventy-five dollars per contributor including at least one hundred matchable contributions of ten dollars or more from residents of the borough, or ten thousand dollars comprised of sums of up to [two hundred fifty]one hundred seventy-five dollars per contributor, whichever is greater.

(iv) member of the city council, not less than five thousand dollars in matchable contributions comprised of sums of up to [two hundred fifty]one hundred seventy-five dollars per contributor including at least seventy-five matchable contributions of ten dollars or more from residents of the district in which the seat is to be filled.

§25. Section 38 of local law 34 for the year 2007 is REPEALED, section 39 of local law 34 for the year 2007 is renumbered section 38, and sections 36, 37, and 38 of local law 34 for the year 2007 are amended to read as follows:

§36. Each city agency with which any person who has business dealings with the city conducts such business shall[,] provide appropriate assistance in developing the doing business data base and shall take such steps as necessary to collect such information as required pursuant to this local law. Each city agency with which any person who has business dealings with the city conducts such business shall, at the board's request, provide appropriate assistance to the board in publicizing this local law and the rules of the board in connection with contributions of persons who have business

dealings with the city; provided, however, that the rules shall not be [provided] applied to persons in categories of doing business activities before such categories are certified by the campaign finance board in accordance with section [twenty-six] thirty-seven of this local law.

§37. Sections one, two, eight, eleven, twelve and forty of this local law shall take effect immediately provided that the implementation of such sections shall take effect as follows: (i) [all of] the provisions of such sections concerning the holding of contracts for the procurement of goods, services or construction shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity[, and persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity [regarding] of an entity with a city contract pursuant to clause (i) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law; (ii) [all of] the provisions of this local law concerning any bid or proposal for a contract for the procurement of goods, services or construction, and the provisions regarding persons employed in a senior managerial capacity with respect to any entity with a city contract pursuant to clause (i) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available



information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, and persons with an interest in an entity which exceeds ten percent of the entity that has submitted a bid or proposal seeking such a contract, and persons employed in a senior managerial capacity of [entities that have submitted bids] any entity holding such a contract or that has submitted a bid or proposal seeking such a contract; (iii) the provisions of this local law concerning acquisition or disposition of real property, [applications for approvals] any application for approval sought pursuant to the provisions of section 195 [or] of the charter, any application for approval sought from the city of New York that has been certified pursuant to section 197-c of the [New York city] charter and any application for a zoning text amendment that has been certified pursuant to section 201 of the charter shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity of an entity with [a real property transaction or land use approval] an acquisition or disposition of real property or an application for approval sought pursuant to the provisions of section 195 of the charter, any application for approval sought from the city of New York that has been certified pursuant to section 197-c of the charter and any application for a zoning text amendment that has been certified pursuant to section 201 of the charter pursuant to [clause] clauses (ii) and (iii) of paragraph (a) of subdivision 18 of section 3-702 of the

code as added by section one of this local law; (iv) the provisions of this local law concerning franchises and concessions shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity[,] and persons with an interest in an entity which exceeds ten percent of the entity [and persons employed in a senior managerial capacity regarding an entity] with a city franchise or concession pursuant to clause (iv) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law; (v) [all of] the provisions of this local law concerning any bid or proposal for a franchise or concession, and the provisions regarding persons employed in a senior managerial capacity with respect to any entity with a city franchise or concession pursuant to clause (iv) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law, shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that such database [includes,] identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, and persons with an interest in an entity which exceeds ten percent of the entity that has submitted a bid or proposal seeking such a franchise or concession, and persons employed in a senior managerial capacity [of entities with] with respect to any entity holding such a franchise or concession or that has submitted a bid or a proposal for such a franchise or concession; (vi) [all of] the provisions of this local law concerning a

recipient of a grant shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity [regarding an] with respect to any entity that is a recipient of a grant pursuant to clause (v) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law; (vii) [all of] the provisions of this local law concerning a party to an economic development agreement shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity [regarding an] with respect to any entity that is an applicant for or a party to an economic development agreement pursuant to clause (vi) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law; (viii) [all of] the provisions of this local law concerning a contract for the investment of pension funds, including investments in a private equity firm and contracts with investment related consultants shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business

database that identifies available information regarding chief executive officers, chief financial officers and/or chief operating officers or persons serving in an equivalent capacity, persons with an interest in an entity which exceeds ten percent of the entity and persons employed in a senior managerial capacity [regarding an] with respect to any entity that is an applicant for or a party to a contract for the investment of pension funds, including investments in a private equity firm and contracts with investment related consultants pursuant to clause (vii) of paragraph (a) of subdivision 18 of section 3-702 of the code as added by section one of this local law; and (ix) [all of] the provisions of this local law concerning lobbyists shall take effect thirty days after the campaign finance board and the department of information technology and telecommunications have certified to the mayor and council that there is a doing business database that identifies lobbyists; and shall be applicable to all receipts, expenditures, and public funds claims after such effective dates for elections held after such effective dates; provided that, upon enactment of this local law, the campaign finance board shall take all necessary steps, including but not limited to the promulgation of forms and rules, to ensure the prompt implementation of this local law upon its effective date. Notwithstanding any provision of law to the contrary, the campaign finance board and the department of information technology and telecommunication may certify any component of the doing business database enumerated in clauses (i) through [(viii)] (ix) of this section as complete when it has determined that each component identifies such persons with reasonable completeness and accuracy. Notwithstanding any provision of law to the contrary, immediately upon certification of each component of the doing business database pursuant to this section, the department of information technology and

telecommunications shall provide to the [Mayor]mayor and the [Council]council an analysis of the steps taken to compile the component of the database certified and the campaign finance board shall provide to the [Mayor]mayor and the [Council]council an analysis of the steps taken to ensure and test for reasonable completeness and accuracy. Such report shall also demonstrate the process by which the department of information technology and telecommunications and the campaign finance board shall update the doing business database and ensure that names of persons no longer doing business with the city are removed. The deadline for certification of this section in relation to clauses (i), [and] (iv), and (ix) shall be six months from the effective date of this local law; the deadline for certification of this section in relation to clauses (ii), (v), (vi), (vii) and (viii) shall be one year from the effective date of this local law; and the deadline for certification of this section in relation to clause (iii) shall be sixteen months from the effective date of this local law; provided, however, that any component of the doing business database that has not been certified on or before December 1, 2008 may not be certified until on or after November 30, 2009.

§[39] 38. With its 2009 post-election report, the campaign finance board shall submit a report to the council on the status of the doing business database. Such report shall contain the status of each of the components enumerated in clauses (i) through [(viii)] (ix) of section [thirty-three] thirty-seven of this local law and whether each such component has been certified, for those components that have not been certified, if any, what the status is of the development of such component of the database and the expected timeline for such component's certification. The campaign finance board shall provide the council and the mayor with recommendations, if any, for exempting certain types of

transactions, applications or agreements from the definition of business dealings with the city as defined in section one of this local law. If such proposals are submitted by the board, and such proposals are accepted by the council, or if the council fails to take action on such proposals within sixty days, such proposals shall take effect. Rejection of such proposals by resolution, or action by the council on amendments to the definition of business dealings with the city different from those contained in such proposals shall constitute action on such proposals.

§26. Section forty of local law 34 for the year 2007 is renumbered section 39 and section forty-one of local law 34 for the year 2007 is renumbered and amended to read as follows:

[§41] §40. Sections three through seven, nine, ten, thirteen through [twenty, and twenty-two through thirty-three] thirty-six and thirty-nine of this local law shall take effect on January 1, 2008; provided, however that such sections shall apply only to elections held on or after such effective date and shall be applicable to all public funds claims for elections held on or after such effective date, regardless of whether the claim for public funds was submitted prior to the effective date.

§ 27. This local law shall take effect immediately.

James W. Caras, Esq.  
Deputy General Counsel

DeNora Getachew  
Counsel to Committee

Israel Rodriguez  
Policy Analyst

Andrew Grossman  
Finance Division

Scott Crowley  
Finance Division



**THE COUNCIL**

**REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION**

ROBERT NEWMAN, LEGISLATIVE DIRECTOR

ALIX PUSTILNIK, DEPUTY DIRECTOR, GOVERNMENTAL AFFAIRS

**COMMITTEE ON GOVERNMENTAL OPERATIONS**

HON. SIMCHA FELDER – CHAIR

**PROPOSED**

**INT. NO. 651-A:**

By Council Member Felder (by request of the Mayor)

**TITLE:**

A Local Law to amend the administrative code of the city of New York, in relation to campaign finance.

December 6, 2007  
16<sup>th</sup> Floor Hearing Room

**I. INTRODUCTION**

On Thursday, December 6, 2007, the Committee on Governmental Operations, chaired by Council Member Simcha Felder, will consider Proposed Int. No. 651-A (“bill”), a bill to amend the administrative code of the City of New York (“Code”), in relation to campaign finance. In June 2007, this Committee considered and passed Proposed Int. No. 586-A, which made various structural and procedural changes to the New York city charter and the administrative code of the city of New York to further strengthen New York City’s campaign finance system. Mayor Bloomberg signed Proposed Int. No. 586-A into law on July 3, 2007 as Local Law 34 of 2007 (“Law”).

In order to address some of the inadvertent errors in the Law, the Committee is considering the bill, which would amend the Campaign Finance Act (“Act”) to ensure that: (i) the contribution limits applicable to those doing business with the city apply for an entire election cycle, meaning a primary and general election, and not for each election; (ii) the new matching level of 6:1 up to \$175 will be retroactively applied from the start of the current election cycle (January 2006); (iii) the exemption from the doing business restrictions for affordable housing developers would only apply to landlords accepting Section 8 and those providers of affordable housing whose selection for benefits do not involve significant discretion by the department of housing preservation and development or other City agencies in awarding a benefit; and to (iv) clarify some of the Law’s provisions.

In addition, the Administration has experienced some technical difficulties with the Law. Accordingly, the Administration is requesting amendments to the Law to: (i) delay the application of the doing business contribution cap on those who act in a “senior managerial



capacity” until July 2008 because they are experiencing difficulty in obtaining this information from current City contractors and franchise and concession holders; (ii) create a mechanism to waive compliance with the “business dealings with the City” requirements in cases where a vendor refuses to disclose Vendex information, but the City needs to contract for goods, services or construction in emergency situations, for security-related reasons or goods, services or construction essential to government operations; and (iii) exempt those whose property is being taken by the City via eminent domain from the doing business contribution limits.

Those invited to testify at this hearing include representatives from the Bloomberg administration, the New York City Campaign Finance Board (“Board”), good government and advocacy groups, election attorneys and other interested parties.

## **II. BACKGROUND**

The Campaign Finance Program was established in 1988 to increase participation in the electoral process regardless of access to wealth, and to reduce undue influence by small concentrations of large contributors and special interests.<sup>1</sup> Since the Program’s inception, it has proved to be a successful campaign finance program and a model for the nation.

Pursuant to Charter section 1052, the Campaign Finance Board is composed of five members,<sup>2</sup> who are responsible for administering the Program in accordance with the Act, which is contained in Chapter 7 of Title 3 of the Code. The Board’s powers are enumerated in subdivisions (5) through (12) of section 1052 of the Charter and throughout the Act. The Board’s powers include, among other things, the power “to audit and examine all matters relating to the performance of its functions and any other matter relating to the proper administration of this chapter and of

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<sup>1</sup> See Proceedings of the Council of the City of N.Y., Int. No. 906-A of 1987, enacted as Local Law 8 of 1988 (codified as N.Y.C. Charter, ch. 46 and N.Y.C. Admin. Code, title 3, ch. 7).

<sup>2</sup> See New York City Charter §1052 (2005).

chapter 8 of title 3 of this code.”<sup>3</sup>

### **III. PROPOSED INT. NO. 651-A**

Section one of the bill would amend the definition of “business dealings with the city” contained in subdivision 18 of section 3-702 of the Act to clarify some of its provisions and exempt certain activity from the definition. Specifically, the bill would clarify that for purposes of the definition of “business dealings with the city,” an “emergency contract or a contract procured through publicly-advertised competitive sealed bidding” would not be included in contracts covered by this definition.

In addition, the bill would clarify that certain actions, transactions and agreements to provide affordable housing are not “business dealings with the city.” Specifically, the bill would clarify that the exemption from the doing business restrictions for affordable housing developers applies to landlords accepting Section 8. In addition, the bill would provide the department of housing preservation and development with the authority to promulgate rules defining which actions, transactions and agreements for the purpose of providing affordable housing would constitute business dealings with the City provided that “only those actions, transactions, and agreements for the purpose of providing affordable housing that involve the exercise of substantial discretion by one or more city officials shall constitute business dealings with the city of New York.”

Section one of the bill would also clarify that for purposes of determining the term of the business dealings with the city with respect to contracts, in the case of “purchase contracts for goods,” the term shall be one year from the date of such purchase.

Post-enactment of the Law, the Administration raised concerns about the City’s ability to

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<sup>3</sup>See Administrative Code of the City of New York §3-710(1) (2005).

procure essential goods, services or construction such as those necessary for security or other essential government operations in cases where a vendor refuses to comply with the requirements of Vendex necessary to include such person in the doing business database. To address this concern, the Administration recommended an amendment to the Law permitting the city chief procurement officer to promulgate rules to create a process by which a person “may apply to the city chief procurement officer for a waiver from inclusion in the doing business database.” Such rules would require the city chief procurement officer to “transmit to the board a copy of any application for a waiver.” Further, the bill would provide that any such waiver could not be granted until the expiration of ten days from the date such application is received by the board. The bill would also require that a “waiver may be granted only after substantial efforts have been made by the chief procurement officer to obtain the information required by this law” and upon a finding that it is in the best interests of the City, which shall be based on a determination that “(i) there is a compelling need to obtain such essential goods, services or construction from the person seeking the exemption and (ii) no other reasonable alternative exists in light of such considerations as cost, uniqueness and the critical nature of such goods, services or construction to the accomplishment of the purchasing agency’s mission.” The bill would provide that such “a waiver may be granted when a person is doing business with the city by virtue of the city’s exercise of its powers of eminent domain.” Finally, the bill would require that the grant of a waiver be posted on the City’s and the Board’s website in publicly accessible locations.

Section one of the bill would also amend subdivision 20 of section 3-702 of the Act to clarify that the phrase “senior managerial capacity” means a “high level supervisory capacity...in which substantial discretion and oversight is exercised over the solicitation, letting

or administration of business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements and applications for land use approvals.”

Section two of the bill would amend subdivision 1-a of section 3-703 to clarify the permissible contribution limits that participating candidates may accept from those with business dealings with the City. The Law provided that participating candidates would be permitted to accept contributions from those with business dealing with the city for “such election.” This drafting inaccuracy would have permitted a participating candidate for city council to accept two contributions totaling two hundred and fifty dollars each from a person with business dealings with the city, one for the primary election and another for the general election. This was not the intent of the drafters in negotiating and drafting the Law. This amendment would correct this error and ensure that similar to the limits applicable to non-doing business contributions, a candidate may only accept the applicable contribution limit from a person with business dealings with the city for “all covered elections held in the same calendar year.”

Section two of the bill would also amend subdivisions 1-a and 1-b of section 3-703 of the Act to clarify that for purposes of those subdivisions the phrase “senior managerial capacity” means a “high level supervisory capacity...in which substantial discretion and oversight is exercised over the solicitation, letting or administration of business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements and applications for land use approvals.”

Sections three through ten of the bill would amend various sections of the Law to address minor technical and grammatical errors to make the language clearer.

Section eleven of the bill would amend paragraph (a) of subdivision 2 of section 3-705 of the Act to adjust the maximum matching funds claim per contributor that a participating

candidate would receive for each matchable contribution in the case of a special elections to five hundred twenty-two dollars. The purpose of this amendment is to ensure that the Board's software is able to process these matching claims and that campaigns solicit contributions in whole dollar increments.

Section twelve of the bill would amend subdivision seven of section 3-705 of the Act to make minor technical and grammatical changes to the provisions regarding any participating candidate's signed statement attesting to the need for additional public funds.

Sections thirteen and fourteen of the bill would amend paragraph (a) of subdivision 1 of section 3-706 of the Act to round the expenditure limits applicable to each primary election, special election to fill a vacancy, and general election to the nearest thousand, which is the way the cost of living adjustment is applied to the expenditure limits and the way the Board has historically treated increases in the expenditure limits.

Sections fifteen through twenty-one of the bill would amend various sections of the Law to address minor technical and grammatical errors to make the language clearer.

Sections twenty-two and twenty-three of the bill would amend subparagraph (iii) of paragraph a of subdivision 3 of section 3-706 and subparagraph (iii) of paragraph b of subdivision 3 of section 3-706 to clarify that the Law's bonus match provisions are applicable to elections occurring after January 1, 2008 regardless of when the underlying contribution was raised. Section twenty-three of the bill would correct a drafting error in the Law by amending subparagraph (iii) of paragraph b of subdivision 3 of section 3-706 to ensure that in cases where a participating candidate's opponent spent, contracted or has obligated to spend, or has received in loans or contributions, or both, three times more than the applicable expenditure limit, the principal committee would receive public funds in an amount not to exceed one hundred twenty-

five percent of the expenditure limitation for such office. The Law, in error, specified that a participating candidate would receive public funds in an amount not to exceed two-thirds of the expenditure limit, however the two-thirds limit is applicable in cases where a participating candidate's opponent has spent, contracted or has obligated to spend, or has received in loans or contributions, or both, an amount that exceeds half the applicable expenditure limit.

Section twenty-four of the bill would amend paragraph (a) of subdivision 2 of section 3-703 of the Act to change the threshold for eligibility for public funding for participating candidates in a primary or general election, or special election to fill a vacancy, to mirror the new maximum matching fund claim of one hundred seventy-five dollars. Accordingly, in order for a participating candidate to qualify to receive public funds the participating candidate would be required to raise the specified number of contributions (applicable to the office that the participating candidate is seeking) from the specified number of contributors in denominations of one hundred seventy-five dollars, not two hundred fifty dollars.

Section twenty-five of the bill would amend the Law's effective date provisions in several respects. First, this section of the bill would repeal section thirty-eight of the Law, which mandated that the new 6:1 matching ratio not take effect until thirty days after the first component of the doing business database was certified. Instead, section twenty-six of this bill would amend section forty-one of the Law by renumbering it section forty and require that the sections of the Law relating to the new matching provisions take effect on January 1, 2008, "for all elections held on or after such effective date and shall be applicable to all public funds claims for elections held on or after such effective date, regardless of whether the claim for public fund was submitted prior to the effective date."

Second, at the request of the Administration, section twenty-five of this bill would delay

the implementation of the “senior managerial capacity” components of the doing business database with respect to a city contract or a city franchise or concession until the second phase of implementation of the doing business database – one year from the effective date of the Law.

Third, section twenty-five of this bill would address an error in the Law with respect to the deadline for certification of the lobbyist component of the doing business database.

Although it was intended that the deadline for certification of the lobbyist component of the doing business database would be six months from the effective date of the Law, in error, this language was not included. Accordingly, section twenty-five of this bill would specify that the deadline for certification of the lobbyist component of the doing business database would be six months from the enactment of the Law.

Fourth, section twenty-five of the bill would make various other technical and grammatical amendments to the Law to clarify the language and numbering of the sections.

Finally, section twenty-seven of the bill states that the bill would become effective immediately.

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2 CITY COUNCIL

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CITY OF NEW YORK

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THE TRANSCRIPT OF THE MINUTES

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of the

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COMMITTEE ON GOVERNMENTAL  
OPERATIONS

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December 6, 2007

Start: 10:05 a.m.

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Recess: 11:07 a.m.

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City Hall

Council Chambers

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New York, New York

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B E F O R E:

15

SIMCHA FELDER

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Chairperson,

17

COUNCIL MEMBERS: Joseph Addabbo  
Erik Martin Dilan  
Larry Seabrook  
Peter Vallone, Jr.  
Gale Brewer

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2 A P P E A R A N C E S

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Amy Loprest  
4 Executive Director  
NYC Campaign Finance Board

5

Shauna Denkensohn  
6 Deputy Executive Director  
NYC Campaign Finance Board

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Sue Ellen Dodell  
8 General Counsel  
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Marla Simpson  
10 Director  
Mayor's Office of Contract Services

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Jessie Shaeffer  
12 Project Director  
Doing Business Accountability Project  
13 Mayor's Office of Contract Services

14 Rachael Fauss  
Policy and Research Associate  
15 Citizens Union

16 Dan Jacoby  
Democracy for New York City

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1 COMMITTEE ON GOVERNMENTAL OPERATIONS

2 CHAIRPERSON FELDER: Good morning, and  
3 welcome to this hearing on the Committee on  
4 Governmental Operations. I am Simcha Felder, Chair  
5 of the Committee, and I am joined by DeNora  
6 Getachew, the Counsel to the Committee, who is  
7 standing under the clock, and Israel Rodriguez, who  
8 is across the street hanging up a sign to make sure  
9 that no one else remains there and comes here,  
10 Policy Analyst to the Committee, and also to my  
11 right is my Communications Director Eric Quo.

12 Today the Committee will consider two  
13 bills of which I am the prime sponsor. Intro. No.  
14 4643, and proposed Intro. No. 6518. First proposed  
15 Intro. No. 651-A. This is a bill that was introduced  
16 by request of the Mayor, which would amend the  
17 Administrative Code of the City of New York with  
18 respect to campaign finance.

19 Specifically this bill would make  
20 various substantive and technical amendments to the  
21 Campaign Finance Reform Bill passed by this  
22 Committee in June of this year to clarify the law  
23 and ensure: 1) that the contribution limits  
24 applicable to those doing business with the City  
25 apply for the entire election cycle. In fact, it

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2 makes sense.

3               Some times laws don't make sense,  
4 this one makes sense. That should be consistent and  
5 that the matching contribution should be consistent.  
6 And that clearly, I would say, was the intent of the  
7 law certainly. Unfortunately, we didn't get the  
8 language down exactly then but we're going to fix it  
9 now.

10              Two, the matching level of six to  
11 one, up to \$175 would be retroactively applied from  
12 the start of the current election cycle. And, again,  
13 that makes sense, it's consistent. Three of the  
14 exemptions from doing business restrictions from the  
15 doing business restrictions for affordable housing  
16 developers would only apply to those developers who  
17 participate in an as-of-right nondiscretionary  
18 affordable housing program, or those which do not  
19 involve significant discretion by HPD or other City  
20 agencies in awarding a benefit.

21              This bill has additional provisions,  
22 included specifically at the request of the Mayor.  
23 Given that representatives of the Administration are  
24 here with us today, I will defer any further  
25 explanation -- I will defer any other further

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2 explanation of these provisions and the reasons that  
3 the Administration feels that they are necessary to  
4 their testimony, which we will hear momentarily.

5 After hearing testimony regarding  
6 proposed Intro. No. 651-A, the Committee will hear  
7 testimony on Intro. No. 643, which I also sponsored.

8 Intro. No. 643 would amend the City  
9 Administrative Procedure Act, also known as CAPA,  
10 require that agencies electronically transmit copies  
11 of proposed rules in a timely manner.

12 While this bill is not as technical  
13 in nature or nearly as long as the Campaign Finance  
14 Bill, it is an important bill for this Committee to  
15 consider, because it would notify and it would  
16 modify the existing CAPA notice requirements to  
17 ensure that the Council and other interested parties  
18 receive notice of agencies' proposed rules in a  
19 timely and efficient manner.

20 Currently CAPA requires agencies to  
21 provide notice of proposed rules to the Council, the  
22 Corporation Counsel, each Council member, the chairs  
23 of all community boards, the news media and civic  
24 organizations. Unfortunately, however, very often  
25 these parties do not receive the required notice

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2 until the commencement, after the commencement on  
3 the comment period on the proposed rule. This does  
4 not, and I emphasize, this does not conform with the  
5 purpose of CAPA which is to ensure that these  
6 parties would be able to meaningfully participate in  
7 the agencies' rule-making process. If it's almost  
8 over, there is no point. It's done. It's a done  
9 deal.

10 Intro. No. 643 would remedy this  
11 problem by mandating that agencies electronically  
12 submit, you know, copies, transmit copies of a  
13 proposed rule and an adopted emergency rule to the  
14 Council and the parties mentioned earlier, no later  
15 than when the agency transmits the proposed rules or  
16 adopted emergency to the City Record for publication  
17 as required by CAPA. And if it can get done for the  
18 City Record, it shouldn't be that difficult to  
19 notify the other parties that are supposed to be  
20 notified.

21 Before we begin today's formal  
22 hearing, I'd like to emphasize that it is my policy  
23 as Chair of the Governmental Operations Committee to  
24 ensure that my hearings begin on time, and I  
25 apologize for starting five, seven minutes late. And

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2 therefore, it is my rule that only those individuals  
3 that sign up to testify within the first 15 minutes  
4 of the start of this hearing will be permitted to  
5 testify.

6                   Additionally, I ask witnesses to  
7 refrain from repeating points made by previous  
8 witnesses. If someone has adequately made the point  
9 that you wish to make, it will suffice to note your  
10 agreement, or you could say that something like if I  
11 had only asked you to testify first, you would have  
12 been able to make the point first and now it's not  
13 fair, something like that, but no one wants to hear  
14 the same thing twice.

15                   And with that, before I call the  
16 witnesses, I just want to mention that somebody  
17 questioned whether I have the authority to have this  
18 rule that is not in place in most of the Committees.  
19 We did some research and I thought it was a good  
20 question.

21                   We did some research and in fact,  
22 under the rules the Chair of the Committee is not  
23 obligated to allow anybody to testify. So, I don't  
24 think it's a deep Talmudic deduction to say that if  
25 I'm not obligated to allow anybody to testify, I

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2 certainly don't have to allow somebody to testify if  
3 they come late. I just don't think it's fair to the  
4 people who are here. And if somebody is interested,  
5 they should make it here on time.

6                   That doesn't mean to say that if  
7 somebody comes in and says they were held up in  
8 traffic or they call in advance and say they'd like  
9 to testify but they can't make it til an hour into  
10 the meeting, we will accommodate anybody, you know,  
11 try to accommodate anybody. The purpose is so that  
12 if this Committee is called Government Operations  
13 and we can't run this Committee efficiently, then  
14 what am I doing here?

15                   The first witness is Amy Loprest from  
16 -- no, my mistake. I'm sorry. The first witness is  
17 Amy Loprest. And as usual, if you can identify  
18 yourself and if you're willing to say good morning,  
19 that's also fine. Whoever else answers any questions  
20 should identify themselves.

21                   MS. LOPREST: Good morning, Chairman  
22 Felder and Committee members -- oh, no Committee  
23 members here yet. I am Amy Loprest, the Executive  
24 Director of the New York City Campaign Finance  
25 Board. With me is our newly appointed Deputy

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2 Executive Director, Shauna Denkensohn. Ms.

3 Denkensohn has taken over for Carole Campolo, who

4 recently retired. Also with me is General Counsel

5 Sue Ellen Dodell. I am here to testify today on

6 Intro. No. 651-A.

7 We would like to thank the Council

8 and the Council staff for soliciting our

9 participation and feedback throughout the entire

10 legislative process. We believe Intro. No. 651-A

11 will largely resolve the technical problems

12 contained in Local Law 34.

13 We have in the past raised concerns

14 about Local Law 34's treatment of so-called exempt

15 expenditures which Intro. No. 651-A will not change.

16 In the interest of providing clarity

17 and simplicity to the law, in its latest

18 post-election report the Board recommended

19 eliminating most of these exemptions, specifically

20 the blanket exemptions for petitioning and

21 compliance. To compensate, and ensure campaigns

22 could continue to make reasonable and necessary

23 expenditures on compliance and other hard-to-predict

24 expenses within the spending limits, we recommended

25 increasing the limit by a modest amount.



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2                   The Council agreed with our  
3 recommendation in substance, and responded by  
4 including provisions in Local Law 34 that we believe  
5 narrow these exemptions substantially. At the same  
6 time, the law increased the spending limits by  
7 roughly 7.5 percent, which is a greater proportion  
8 than the typical campaign has claimed as exempt.

9                   The Board believes the language of  
10 Local Law 34, regarding the new exemptions does not  
11 provide the level of clarity we sought, particularly  
12 with regard to expenses for the post-election audit.  
13 However, the Committee report for Local Law 34  
14 reflects our shared understanding on this point.

15                  To clarify, post-election spending  
16 has never counted towards the limit. The  
17 post-election audit begins after the election, and  
18 expenditures made to prepare the response have  
19 therefore been and will continue to be exempt from  
20 the spending limits.

21                  As in the past, the Board will  
22 construe the exemptions contained in Local Law 34  
23 narrowly to ensure that no participating campaign is  
24 allowed to gain an unfair advantage by conducting  
25 activities beyond what is allowed under the spending

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2 limits.

3                   The Board will promulgate rules  
4 reflecting our common understanding of the law's  
5 intent as well as the need to provide campaigns with  
6 clear guidance.

7                   We are pleased to report that much  
8 progress has been made towards the implementation of  
9 those sections of Local Law 34 dealing with persons  
10 and entities doing business with the City, and I  
11 believe you will hear more about this from the  
12 Administration.

13                   The CFB staff is working closely with  
14 the Mayor's Office of Contract Services and DoITT to  
15 meet the law's deadline for completion of the first  
16 phase of the unified doing business database. A  
17 meeting of the Board has been scheduled for January  
18 3rd, 2008, the certification date contemplated in  
19 the law, and the Board anticipates issuing its  
20 certification report in conjunction with that  
21 meeting. Groundwork is also being laid for the  
22 subsequent phases of the doing business database.

23                   We are also happy to announce that  
24 the CFB staff has completed a redesign of our  
25 Candidate Software, C-SMART, for the 2009 election.

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2 Several enhancements to the software were added in  
3 response to comments made by candidates after the  
4 2005 election.

5                   The new version of the software  
6 allows candidates to synchronize their disclosure  
7 and write checks with widely used bookkeeping  
8 applications QuickBooks and Microsoft Money, and  
9 gives them the ability to import records from other  
10 sources, such as contributions received through a  
11 campaign website.

12                   The new software also contains a  
13 fundraising module that will help candidates better  
14 manage their tracking of contributor information,  
15 and can easily produce and print letters to campaign  
16 contributors. It has a new, modern look and feel  
17 that should be more user-friendly and easier on the  
18 eye.

19                   We have initiated a pilot program  
20 with seven currently active 2009 campaigns to test  
21 the new software for the January 15th, 2008 filing.

22                   Despite the complexity of the new  
23 law, we are working very hard to make compliance as  
24 simple as possible for all candidates. As you know,  
25 the CFB is preparing to expand our staff to meet the

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2 new and significant mandates contained in Local Law

3 34. We are pleased to have the continued support of

4 the Council as we structure our agency to implement

5 those important reforms.

6 Thank you for the opportunity to

7 testify today, and I look forward to answering any

8 questions you may have.

9 CHAIRPERSON FELDER: Thank you very

10 much.

11 I have to step across to vote and

12 Councilman Addabbo will be chairing the meeting.

13 Thank you.

14 ACTING CHAIRPERSON ADDABBO: Good

15 morning, everyone. Thanks to Chair Felder for

16 putting me in this situation here.

17 Again, I want to thank you very much

18 for your time and testimony. What cost of savings

19 will CFB encounter by going from the four-to-one

20 matching to the six-to-one, as far as you know?

21 MS. LOPREST: Well, it will probably

22 be about the same, because the total amount per

23 claim is about the same amount. So, there is not

24 going to be a cost savings for public funds because

25 each claim will be worth basically the same amount,

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2 four-to-one to 250, six-to-one to 175. The amount of  
3 matching funds for each claim is about the same.

4 ACTING CHAIRPERSON ADDABBO: Do you  
5 see that same answer five, ten, 15 years from now?  
6 Again, do you see a change possibly in the future?

7 MS. LOPREST: I mean, it's hard to  
8 predict. Obviously when the matching rate when from  
9 one-to-one to 1,000 to four-to-one to 250, in fairly  
10 short order the most common or the most frequent  
11 contribution size went to \$250. So, I anticipate  
12 that that same event will happen with the change to  
13 the maximum claim being 175 that in short order the  
14 most frequent contribution size will be 175. But  
15 it's hard to predict the future. But after, as you  
16 know, after each election cycle the law contemplates  
17 that the Board reviews the entire, how the law  
18 worked for the entire election cycle, and makes  
19 recommendations for change, and that, the cost  
20 increase and the cost in public funds is one of the  
21 things that's always tracked in that report.

22 ACTING CHAIRPERSON ADDABBO: You  
23 mentioned it just a second ago, do you feel that  
24 this kind of review is a healthy discussion to have,  
25 is a good thing to have to review certain, even the

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2 four-to-one and six-to-one, in other words, do you  
3 think this is a healthy discussion to have and to  
4 make these reviews periodically?

5 MS. LOPREST: Yes. I think it's  
6 probably one of the great points of the Campaign  
7 Finance Act is that they put into this law this  
8 mandated periodic review. I think that's great.

9 ACTING CHAIRPERSON ADDABBO: And  
10 again, we all agree with the mandates, correct?

11 MS. LOPREST: Yes.

12 ACTING CHAIRPERSON ADDABBO: Okay. Any  
13 other questions from my colleagues? We have been  
14 joined by Council Member Larry Seabrook. Mr.  
15 Seabrook. And Council Member Dilan is entering the  
16 Chambers. Don't be shy. All you need is a chair to  
17 switch, right? And we've been rejoined by Council  
18 Member Simcha Felder, our Chair. Thank God.

19 CHAIRPERSON FELDER: Are you concerned  
20 at all about the Administration's request for an  
21 extension on the implementation of the date for  
22 doing business component related to senior  
23 managements' capacity?

24 MS. LOPREST: No. I mean, as I've  
25 said, we've been working very closely with the

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2 people from MOCs and from DoITT and, you know, they  
3 have been working very, very hard on meeting the  
4 obligations and I'm sure that Marla Simpson will  
5 talk about what they've been doing. But they have  
6 been working very hard and that's, you know, one  
7 small component of the database. So, a great  
8 majority of the information will be available at the  
9 first phase.

10 CHAIRPERSON FELDER: And finally, the  
11 Administration recommended a waiver process, for  
12 compliance with doing business requirements for  
13 those vendors that refuse to comply with Vendex, but  
14 that the City needs to contract with the vendor for  
15 goods, services or construction emergency situations  
16 for security-related reasons or goods, services or  
17 construction essential to government operations; are  
18 you concerned about this waiver?

19 MS. LOPREST: I'm not sure what is  
20 contemplated. I look forward to hearing more of the  
21 testimony about what they're contemplating in this  
22 waiver process.

23 You know, this is the advantage where  
24 I went first and I haven't heard her testimony. So,  
25 I don't know, and we don't really have any comments

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2 about it.

3 CHAIRPERSON FELDER: So the last  
4 question I asked, you don't have an answer yet?

5 MS. LOPREST: In Local Law 34 there  
6 was a waiver always and I think that this, I mean  
7 the way I read it, flushes out how it will be  
8 applied. I mean, it depends on -- I mean, I will  
9 listen to what Marla has to say about that, but --

10 CHAIRPERSON FELDER: Okay, you know  
11 what? Since you're going to be here listening,  
12 DeNora, I think we should give the Chair Amy  
13 Loprest, you know, we'll give you an opportunity to  
14 come back to testify on this question once they're  
15 done, okay?

16 MS. LOPREST: Okay.

17 CHAIRPERSON FELDER: Thank you very  
18 much for your testimony.

19 We're now going to hear from Marla  
20 Simpson, the Director of the Mayor's Office of  
21 Contract Services.

22 MS. SIMPSON: Good morning. Thank you,  
23 Mr. Chair. I am Marla Simpson. I am the Director of  
24 the Mayor's Office of Contract Services and the  
25 City's Chief Procurement Officer. I want to



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2 apologize that I am not yet joined by Anthony  
3 Crowell, Counselor to the Mayor. We are hopeful that  
4 he will be available very soon. He has been  
5 unavoidably detained with the Mayor.

6 I am very delighted to have the  
7 opportunity today to testify before this Committee  
8 to discuss the various amendments that we have  
9 proposed for the City's landmark Pay to Play  
10 legislation, which was Local Law 34 of 2007.

11 Local Law 34, passed by the Council  
12 and signed by the Mayor in July of this year, as you  
13 know mandates the creation of a doing business  
14 database containing the names of entities and people  
15 who are considered to be doing business with the  
16 City for purposes of enforcing the new limitations  
17 on campaign contributions.

18 My office, the Mayor's Office of  
19 Contract Services, or MOCs, was given the primary  
20 responsibility to gather and process the information  
21 required to be contained in the database.

22 Local Law 34 is to be implemented in  
23 three phases, corresponding to different types of  
24 transactions that are considered business dealings  
25 with the City.

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2                   At the start of each phase, as noted  
3 in the prior testimony, the Department of  
4 Information, Technology and Telecommunications,  
5 DoITT, and the Campaign Finance Board, must certify  
6 that the database for that particular phase is  
7 reasonably complete so that the law can be enforced.

8                   I am pleased to report that we are  
9 well on our way to completing the database for Phase  
10 1 of the law, which commences on January 3rd of  
11 2008, and will cover current City contracts,  
12 franchises and concessions.

13                  In order to create that initial  
14 database, MOCs formed and staffed a new unit, the  
15 Doing Business Accountability Project. I'm joined  
16 here today by Jessie Shaffer, who is the Project  
17 Director for the DBA Project, as we call it.

18                  In the past five months, the DBA  
19 Project has processed more than 300,000 procurements  
20 from 186 agencies that are covered by Local Law 34.  
21 I will note that as City Chief Procurement Officer,  
22 this is a very exciting development, in and of  
23 itself, since we have never before had comprehensive  
24 data on so broad an array of agencies.

25                  In addition, the DBA project has

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2 identified 3,500 vendors that will be considered as  
3 doing business with the City as of that January 3rd  
4 Phase 1 target date, and the project has sent  
5 mailings to all of those 3,500 vendors to confirm or  
6 obtain the names of their principal officers, owners  
7 and senior managers.

8                   As of yesterday, we have received  
9 replies from 1,759 or approximately 50 percent of  
10 the 3,500 letters mailed. About three-quarters of  
11 those were already registered with their data on the  
12 City's Vendex database. The letters that we sent  
13 them simply asked them to confirm the Officer and  
14 owner names that we had in Vendex, and informed them  
15 that in the absence of a reply we would use the  
16 Vendex data and then in addition asked for new  
17 information concerning the names of their senior  
18 managers, which do not exist in our Vendex system.

19                   For about 25 percent of the 3,500  
20 vendors covered by Local Law 34, they are not  
21 already registered in Vendex so we sent letters  
22 requesting that they supply all of the necessary  
23 printable information.

24                   Throughout December we will continue  
25 to mail to those vendors and to place follow-up

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2 calls to any who have not yet responded. As a result  
3 of our efforts to date, we now have information on  
4 the principal owners and officers, either from  
5 Vendex or from the mailing for more than 87 percent  
6 of the vendors. We expect the number to exceed 92  
7 percent by the end of December. Considering that at  
8 this point we have no real enforcement mechanism  
9 because the law has not yet gone into effect, we are  
10 very pleased with the data collection result thus  
11 far, and we believe we will attain the reasonably  
12 complete standard for most categories of vendors and  
13 principals.

14                   For the narrow category of senior  
15 managers who have historically not been listed in  
16 Vendex, we are not likely to meet the January 3rd  
17 target date for substantial completeness. Although,  
18 and let me be clear, we are well underway, thus far  
19 our mailings and phone calls have yielded  
20 approximately 40 percent of the needed data and we  
21 are working to secure the remaining 60 percent as  
22 rapidly as possible.

23                   As you know, Local Law 34 was drafted  
24 with a phased approach. The inclusion of the names  
25 of entities and principals who do business with --

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2 who seek business from the City, those who proposes  
3 but may not actually be awarded a contract, does not  
4 occur until July 3rd. The main reason for that delay  
5 was the recognition at the outset, at the time we  
6 drafted Local Law 34 in conjunction with the  
7 Council, that the City has no preexisting sources of  
8 data such as Vendex, to obtain information on the  
9 principals of unsuccessful proposers. Instead we  
10 must collect that proposer information from scratch.

11 To do that, we need to incorporate a  
12 request for such information into our contract  
13 solicitation process, so that proposers will have to  
14 supply it up front in order to have their proposals  
15 considered.

16 The DBA project, working closely with  
17 the City's Law Department, has already begun  
18 modifying all City agency solicitations for that  
19 purpose, so that when July 3rd rolls around, we will  
20 be able to supply a reasonably complete database on  
21 this point, as well.

22 For the same reasons that Local Law  
23 34 has a delayed effectiveness date for proposers,  
24 Intro. 651 is now before you seeking to amend the  
25 requirement for senior manager data. Just as the

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2 City has no preexisting source of data for the names  
3 of the principals of unsuccessful proposers, so, too  
4 we have no source for the names of senior managers.

5                   Although we did not initially  
6 recognize how much of the process of setting up the  
7 database would be hampered by the fact that senior  
8 managers are not listed in Vendex, we now believe  
9 that it is important to make this amendment to the  
10 Local Law 34 schedule so that manager data would be  
11 available in Phase 2 as of July 3rd, rather than  
12 January 3rd.

13                   We are nonetheless confident that  
14 even without the senior manager data, the January  
15 3rd version of the database will still contain  
16 information plainly sufficient to meet Local Law  
17 34's ambitious goal of curbing Pay to Play practices  
18 by those who do business with the City, if for no  
19 other reason than it will contain the names of the  
20 entities, officers and owners to whom all of the  
21 senior managers report.

22                   During Phase 1, MOCs will be able to  
23 compel all of the entities that are newly awarded  
24 contract franchises and concessions to provide all  
25 the required information, including the names of

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2 their manager.

3                   Thus, for the awards that are made  
4 from January 3rd on, we anticipate a much higher  
5 compliance rate. As no new awards will be processed  
6 without complete Local Law 34 data.

7                   Meanwhile, we will continue to pursue  
8 the senior manager information for vendors holding  
9 contracts that were awarded before January 3rd, and  
10 we are confident that with those added months we can  
11 move the completion rate for the pre-existing  
12 vendors to an acceptable level.

13                   Another amendment included in Intro.  
14 651 that I'd like to discuss this morning is the one  
15 that would allow the City Chief Procurement Officer  
16 to promulgate rules to permit in certain narrow  
17 circumstances the compliance with Local Law 34 to be  
18 waived. Before any such waiver would be considered,  
19 MOCs would have to show that we have already made  
20 substantial efforts to obtain full compliance with  
21 the required disclosures. But if those efforts prove  
22 fruitless, the City must retain a mechanism to allow  
23 agencies to make essential purchases.

24                   As the amendment provides, a waiver  
25 could only be granted upon a finding both that the

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2 agency had a compelling need for the purchase and  
3 that it had no reasonable alternative.

4                   Waiver applications would be reported  
5 to the Campaign Finance Board at least ten days  
6 prior to any action to grant or deny them, and any  
7 entity that eventually received a waiver would be  
8 listed on both the MOCs and CFB websites so that the  
9 public would be aware of the possibility that  
10 contributions by individuals affiliated by those  
11 vendors would continue, or could continue to be  
12 made.

13                   The Vendex Statute contains a similar  
14 authorization, authorizing the procurement policy  
15 board or the PPB to establish a rules-based waiver  
16 process for Vendex.

17                   The PPB exercised that authority more  
18 than a decade ago upon notice to the Council as  
19 required by the Vendex Statute. From time to time,  
20 as City Chief Procurement Officer I now grant Vendex  
21 waivers under those PPB rules. The waiver provisions  
22 for Vendex are very rarely invoked and the parallel  
23 waiver process that's been proposed for Local Law 34  
24 data, is even more narrowly drawn and much more  
25 transparent.



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2 I'll give an example of a  
3 circumstance that might support a waiver. If we have  
4 a situation where an agency needs to make a purchase  
5 that is critical to public health or safety and has  
6 only a sole source vendor as their option, and  
7 particularly when that entity, that sole source, is  
8 a privately held company that is not required to  
9 disclose its ownership in any other context. We  
10 could find that such an entity may readily give us  
11 the information on who its senior managers and  
12 officers are, but might resist supplying ownership  
13 data because that would make non-public information  
14 accessible to the public.

15 On occasion, that has arisen in  
16 Vendex when a foreign entity holds all or partial  
17 ownership of a US-based subsidiary, but it should be  
18 noted that citizens from foreign entities are  
19 otherwise barred from making campaign contributions.

20 Another example that is specifically  
21 listed in 651 would be for entities whose inclusion  
22 in the database results from the City's exercise of  
23 eminent domain, inasmuch as their status as an  
24 entity doing business with the City is not voluntary  
25 on their part, they may well not cooperate our

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2 efforts to collect their data. That said, I must  
3 emphasize that all of our vendor contacts to date,  
4 and as you heard earlier, we have had thousands of  
5 vendor contacts, have not yielded any instances of  
6 outright refusal to provide the necessary data.

7                   Based on our experience with Vendex,  
8 which requests much more intrusive information on  
9 vendors and their principals, while we view the  
10 waiver provisions included in Intro. 651 as  
11 essential, we do not expect to invoke them on more  
12 than a handful of occasions.

13                   As I noted earlier, we are confident  
14 that with these amendments the doing business  
15 database will be certified by January 3rd and New  
16 York City's model campaign finance law will have  
17 been made even stronger.

18                   Thank you, and I welcome any  
19 questions you may have at this time.

20                   CHAIRPERSON FELDER: Thank you. And I  
21 want to welcome our technology czar, Council Member  
22 Gale Brewer.

23                   Councilman Joseph Addabbo has a  
24 question.

25                   COUNCIL MEMBER ADDABBO: Thank you,

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2 Mr. Chair. I thank your Committee for having this  
3 hearing today. Thank you very much for having you  
4 here as well for your testimony. It's a lot of work,  
5 you know, obviously implementing what we need to do,  
6 and this is a lot of work as explained in your  
7 testimony.

8 Do you see the need for requesting  
9 any extensions of time to getting all of the data  
10 and implement what we need to do?

11 MS. SIMPSON: Other than as proposed  
12 in 651 for one small category of data, no.  
13 Absolutely not.

14 COUNCIL MEMBER ADDABBO: Adequate  
15 staff? You're adequately staffed to gain all the  
16 information?

17 MS. SIMPSON: Yes, sir. The Mayor has  
18 taken great pains to make sure that this project is  
19 adequately staffed and we're moving gangbusters  
20 toward collection of all of that data.

21 COUNCIL MEMBER ADDABBO: Was staff  
22 recently hired over the past year and a half?

23 MS. SIMPSON: Oh, absolutely, yes.  
24 Staff was hired specifically for this project.

25 COUNCIL MEMBER ADDABBO: Do you know

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2 how much? How many personnel?

3 MS. SIMPSON: To date we have the  
4 Project Director, three analysts and I believe, in  
5 terms of data entry staff that are fully committed  
6 to the project, three, with a fourth in process and  
7 the resources of my office, which I have several  
8 other large administrative data entry staffs in my  
9 office and on a swing basis we've made many other  
10 data entry people available.

11 COUNCIL MEMBER ADDABBO: Do you  
12 foresee additional hirings in the future, near  
13 future?

14 MS. SIMPSON: We have some other slots  
15 that are budgeted, and we intend to continue to hire  
16 on an as-needed basis.

17 I must emphasize, though, that the  
18 issue that's reflected in Intro. 651 is not impacted  
19 at all by the staffing level because it really has  
20 to do with the actions by the vendors, not our own  
21 actions. We've succeeded in getting multiple  
22 mailings to the vendors, there is no question that  
23 they've received the information, and we have made  
24 multiple rounds of phone calls to track down  
25 follow-up information, and we have a hot line that

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2 the vendors can call us. And, so, again, we don't  
3 have an issue from a staffing standpoint on  
4 completion. It's more of a change in terms of the  
5 expectation or the culture for the vendors  
6 themselves. They're very used to seeing the City's  
7 Vendex forms and while the form for this law is  
8 much, much shorter and much less detailed, many  
9 vendors who get a form in the mail from the City  
10 think that it must just be some new version of  
11 Vendex.

12 So, we have to get out there and make  
13 it understood by the vendors that this is an  
14 additional separate form that we're asking them to  
15 reply to.

16 We made it as easy as possible. The  
17 form is prepopulated so that all the data that we  
18 have on Vendex is shown to the vendor so they don't  
19 have to fill in duplicate data that we already have  
20 and they're simply asked to confirm yes or no are  
21 these names correct, have they changed? And they  
22 give us the changes and we input the changes.

23 COUNCIL MEMBER ADDABBO: Ms. Simpson,  
24 I thank you very much for the update, and I look  
25 forward to a periodic update as we have you come

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2 before this Committee in the future.

3 MS. SIMPSON: We would be happy to do  
4 that.

5 COUNCIL MEMBER ADDABBO: Thank you.

6 Thank you, Mr. Chair.

7 CHAIRPERSON FELDER: Thank you.

8 Council Member Brewer.

9 COUNCIL MEMBER BREWER: Thank you. So,  
10 I'll call Jessie, Jessie, Jessie.

11 What is the way in which it's  
12 updated? In other words, as you know, I have a lot  
13 of my own less complicated databases but I have a  
14 lot of them. How do you update it? What is the  
15 responsibility for the vendor and for the City?

16 MS. SIMPSON: What we are doing will  
17 serve two issues in terms of updating, and let me  
18 make sure I address what your concern is. One issue  
19 is as the transactions themselves change, and there  
20 we draw, Jessie would probably know more accurately,  
21 but we draw a majority of the data from the City's  
22 Financial Management System, and for those agencies  
23 that are not on the Financial Management System,  
24 we're establishing with DoITT's help separate  
25 pipelines to get those updates on at least a monthly

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2 basis, as Local Law 34 requires.

3                   Now, since we haven't yet hit the  
4 January 3rd date, that monthly update process hasn't  
5 occurred yet, because we're basically working now on  
6 those contracts that were awarded say for the past,  
7 you know, whatever it is, decade or more and that  
8 happen to be open and that will be open still on  
9 January 3rd. So, we have a known universe that we're  
10 working with now and our goal is to merge the data  
11 from all of the different sources where it lives to  
12 put it into a single database, the doing business  
13 database.

14                   When a principal or an owner or an  
15 officer or a manager changes in an individual  
16 vendor, we're also establishing a process for those  
17 kinds of updates.

18                   Much like happens with Vendex, the  
19 critical time frame when you ask that question is  
20 when the actual item is coming through the process.  
21 So, for Phase 1, when we're dealing with only  
22 awards, we will update that information prior to the  
23 completion of the award process, for most agencies  
24 that means the contract is being registered by the  
25 City's Comptroller, so right before registration,

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2 that would be updated. The proposal, it would be  
3 done at the time of proposal, but that doesn't kick  
4 in until Phase 2 in July.

5 COUNCIL MEMBER BREWER: Okay. There is  
6 a question here you may have answered about  
7 affordable housing exemptions, did you already  
8 discuss that?

9 MS. SIMPSON: I did not. That is one  
10 of the topics that Anthony Crowell has been more  
11 involved in than I. But go ahead and ask the  
12 question and I will either know the answer or I will  
13 get you the answer.

14 COUNCIL MEMBER BREWER: Well, the  
15 answer (sic) is has the exemption that is contained  
16 in the bill different from the law passed in June?  
17 And then what types of actions are covered?

18 MS. SIMPSON: Primarily, as I  
19 understand the distinction, the distinction is that  
20 for those types of affordable housing transactions  
21 where discretion, substantial discretion is at  
22 stake, those transactions would be covered. Whereas,  
23 the transactions that are basically  
24 non-discretionary or predominantly non-discretionary  
25 would be taken out of -- much as competitive-sealed



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2 bids are already taken out of the law.

3 In terms of what the distinction is,

4 Jess, do you want to comment on that?

5 MR. SHAEFFER: The original bill

6 listed --

7 COUNCIL MEMBER BREWER: You have to

8 say who you are, Jessie.

9 MR. SHAEFFER: I'm Jessie Shaeffer.

10 I'm the Project Director for the Doing Business

11 Accountability Project.

12 The original bill listed very

13 specific exemptions. It detailed quite a large

14 number of them. The amendment authorizes HPD to

15 establish, to promulgate rules, plays out that the

16 intent of those rules is to make sure, as Marla just

17 said, that only discretionary, significant

18 discretionary items in the area of affordable

19 housing are included and the others are excluded.

20 COUNCIL MEMBER BREWER: I kind of

21 understand. I just hope that people in the field

22 understand. So, I guess that's part of education.

23 MS. SIMPSON: And also part of the

24 CAPA process. We'd be I think very interested in

25 working with not only the City Council but housing

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2 organizations and advocates during the CAPA process,  
3 because there will be rules generated by HPD and we  
4 need to get the word out on how those, and let them  
5 comment at that time.

6 COUNCIL MEMBER BREWER: Okay, thank  
7 you, Mr. Chair.

8 CHAIRPERSON FELDER: How many vendors  
9 during the past fiscal year would you say were  
10 non-compliant with the Vendex requirements that fit  
11 into the exception you mentioned?

12 MS. SIMPSON: Under a dozen. Perhaps  
13 about five.

14 CHAIRPERSON FELDER: And the whole  
15 universe is?

16 MS. SIMPSON: Oh, in terms of Vendex  
17 waivers?

18 Roughly, yes, there are some standard  
19 waivers that have been issued for many years for,  
20 for example, not-for-profits that are controlled by  
21 the City. Technically an organization like the  
22 Brooklyn Navy Yard or EDC are technically shown in  
23 the City system as vendors, and so, absent a waiver,  
24 they would all be required and their boards would be  
25 required to do Vendex.

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2                   Since we have all the information  
3 that Vendex would give us on all of those board  
4 members who are City officials anyway, there's been  
5 some standing waivers for City not-for-profits for  
6 many years. When you take those out of the mix, my  
7 guess is we do, again, somewhere between three and  
8 ten per year, tops.

9                   Oh, out of how many vendors? Again, I  
10 don't recall the exact number of open contract  
11 vendors at any one time. It's somewhere in the  
12 neighborhood of eight- or nine-thousand, I think.

13                  And the numbers that I know from the  
14 Vendex system, again, just to go back to my  
15 testimony, we've never before had, prior to Local  
16 Law 34, we have never had cumulative numbers that  
17 included such entities as the Housing Authority,  
18 HHC, SCA, the Department of Ed. Our numbers in the  
19 past have been just the agencies that are subject to  
20 the PPB rules, and that's 45 Mayoral agencies.

21                  We're now looking at data from 186.  
22 So, again, the number of vendors that are out there  
23 are probably higher than I'm used to reporting when  
24 I report on just the PPB agencies.

25                  CHAIRPERSON FELDER: In terms of the

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2 practical effect, would that mean they have a waiver  
3 but they would still be obligated under the law in  
4 terms of the contribution restrictions, but you just  
5 couldn't include them into the database, or they  
6 would just be exempt?

7 MS. SIMPSON: Again, going back to my  
8 hypothetical of the company that doesn't want to  
9 disclose owners, and I think of all of the  
10 circumstances that we face, the one that's the most  
11 likely to happen will be a privately held company  
12 that objects to making a disclosure of its  
13 ownership.

14 What will happen there is you will  
15 have the name of the entity, you will probably, and  
16 you will certainly have senior managers, because in  
17 order to do a contract with us, we have to know who  
18 their senior manager is, and you will probably have  
19 the officers, because typically we will organize a  
20 US or a New York-based subsidiary and we will have  
21 the officers' names. So, you will know most of the  
22 people who could conceivably make contributions that  
23 would influence the process and they will be on the  
24 database, and the name of the company will be on the  
25 database, and then if we give them a waiver for the

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2 disclosure of owners, there will be a posted entry  
3 on our website that says, you know, in effect,  
4 attention world, here is a company that did not  
5 disclose its owners.

6                   So, you would have the tools if you  
7 were a member of the public, investigator of some  
8 sort, a reporter, or you could begin to pursue,  
9 okay, are we suddenly getting a donation that might  
10 be affiliated with that company from the owners who  
11 we don't know who their names are. I mean, there  
12 would be some basis to guess at least, but they  
13 would be restricted as the people that they  
14 disclose, and that would always include the  
15 managers, because it's not possible to get a  
16 contract with the City without knowing the managers.

17                   CHAIRPERSON FELDER: But even those  
18 that were not disclosed would be obligated under the  
19 law. The same restrictions would exist, we just  
20 don't have that information.

21                   MS. SIMPSON: That's right. So, again  
22 --

23                   CHAIRPERSON FELDER: I'm being a  
24 little picky, because there is a distinction between  
25 us not being able to force them to give us the

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2 information --

3 MS. SIMPSON: Right.

4 CHAIRPERSON FELDER: -- And if somehow  
5 we're able to get the information, whether they  
6 know, even if we don't know who they are, whether  
7 they know that they are not permitted?

8 MS. SIMPSON: I don't know, and I  
9 guess I will defer again to the Campaign Finance  
10 Board. I know we're adding some reference to the  
11 contributor card?

12 CHAIRPERSON FELDER: If you could  
13 approach the bench, and speak into the mic. No, you  
14 don't have to bend down, sit down.

15 MS. LOPREST: No, it's okay.

16 CHAIRPERSON FELDER: No, no, no, no.  
17 Not in my house. Sit down.

18 MS. LOPREST: Actually, this is an  
19 interesting question and I think we would have to  
20 look into it, whether or not, I will have to look at  
21 how the law is drafted, about the contribution  
22 limits, whether or not it applies only to people who  
23 are in the doing business database, so once people  
24 are waived from being in the database, then they are  
25 waived from all the requirements, or whether you're

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2 bound by all the requirements, you're just waived  
3 from being in the database, and I don't know, I  
4 would have to review the language of the law to  
5 understand whether which scenario would apply.

6 CHAIRPERSON FELDER: So, now that  
7 you're here I would ask you, if you do your research  
8 and in fact find out that it's only those that are  
9 on the database, how would you feel to the proposal?

10 MS. LOPREST: Well, I mean, as I said,  
11 I mean as Ms. Simpson described, the waiver process  
12 seems very narrowly drawn, you know, appears will be  
13 very rarely -- whether it's rarely applied. You  
14 know, there is significant public disclosure of the  
15 people who get the waiver both on the MOCs website  
16 and on the CFB's website, and, you know, as I spoke  
17 about with Councilman Addabbo, you know, this law,  
18 the doing business law, has its own special review  
19 process for after the election, and this is one of  
20 the issues. If the waiver number is much higher than  
21 MOCs traditional experience with Vendex waivers,  
22 then that would be something that would be commented  
23 on, I think we would have to wait and see.

24 The way the law, the Intro. 651-A  
25 reads, it's that these people are applying for a

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2 waiver from inclusion in the doing business

3 database. Again, that doesn't fully answer the

4 question about whether being waived from inclusion

5 in the doing business database waives you from the

6 contribution limits, and we'll look into that and

7 get back to you.

8 CHAIRPERSON FELDER: Because I would

9 just say, if it doesn't waive that party, then it's

10 less of an issue. But if it does waive that party, I

11 know that's not the intent but it almost seems as

12 though somebody -- the City is stuck in needing

13 services that they can't get elsewhere and as a

14 result of that then everything is okay. That doesn't

15 make much sense. If, in fact, it's the other way

16 around, then we understand that the City needed the

17 services, you know, they can't get the information,

18 but people know that whether we have the information

19 now, maybe we could get the information later, and

20 if you're in violation of the law, you know, in some

21 way, ultimately you know things may not be good.

22 MS. LOPREST: Well, as you know, I

23 mean the Campaign Finance Board only has

24 jurisdiction over the candidates, and the only

25 sanction that we could possibly impose is a sanction



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2 on someone, you know, a contribution from someone  
3 who otherwise is prohibited. But I mean, we will  
4 look into the particular question about whether or  
5 not, you know, if you're waived from it being in the  
6 database, whether or not that means you're waived  
7 from the contribution prohibitions in the law.

8 CHAIRPERSON FELDER: I think I would  
9 appreciate it very much, because I think it's very,  
10 very important. We certainly don't want to have  
11 situations where people are faced, even if it's not  
12 the candidates, faced with a problem that they never  
13 anticipated. You know, one way or the other it  
14 should just be clear.

15 MS. SIMPSON: We will look at this  
16 more closely, but in Section 2 of the bill it does  
17 appear that the language on barring the contribution  
18 applies to anyone who is doing business, who is  
19 defined as doing business. It doesn't appear to be  
20 linked to the actual inclusion in the database. So,  
21 if that individual said on a card that they were  
22 doing business, then that contribution would not be  
23 matchable. And if they were asked the question on  
24 the card and didn't tell the truth, then at least in  
25 theory that could come out in a later investigation

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2 or audit.

3 CHAIRPERSON FELDER: That would seem  
4 to be very consistent and make a lot more sense and  
5 solve a lot of problems.

6 Now that you're there, if you could  
7 respond to the question that I had asked you  
8 earlier, now that you've heard the testimony?

9 MS. LOPREST: Well, my answer is very  
10 similar to what was just said, is that I think that,  
11 you know, based on the testimony that, you know,  
12 this waiver provision is very narrowly drawn, it's  
13 going to be rarely applied, that there is  
14 significant public disclosure of those who have the  
15 waiver both on the CFB and MOCs' websites and that  
16 there is a review process for the entire law  
17 contemplated in Local Law 34. I think that there is  
18 -- you know, really this waiver process is not  
19 really a problem.

20 CHAIRPERSON FELDER: Thank you very  
21 much, and thank you for your testimony.

22 Now, Ms. Simpson, you said that Mr.  
23 Crowell couldn't make it but he has some written  
24 testimony?

25 MS. SIMPSON: No, he was going to be

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2 available for questions and answers. The testimony  
3 is solely mine, and I do apologize again that he has  
4 been unavoidably detained.

5 CHAIRPERSON FELDER: We're not going  
6 to close the hearing until he comes, because I know  
7 that he'll be disappointed, all right?

8 MS. SIMPSON: I will let him know, and  
9 I will let the Sergeant-At-Arms know if it's going  
10 to be a delay that's inordinate.

11 CHAIRPERSON FELDER: No, the  
12 Sergeant-At-Arms for us.

13 MS. SIMPSON: Okay.

14 CHAIRPERSON FELDER: You work with  
15 him.

16 MS. SIMPSON: Okay.

17 CHAIRPERSON FELDER: Tell him that  
18 we're going to wait here til --

19 MS. SIMPSON: You're going to wait  
20 here, okay.

21 CHAIRPERSON FELDER: Til Passover, if  
22 necessary.

23 Thank you for your testimony.

24 MS. SIMPSON: Thank you.

25 CHAIRPERSON FELDER: We've been joined

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2 by Council Member Peter Vallone, Jr.

3 I'd like to call Rachael Fauss from  
4 Citizens Union and Dan Jacoby from Democracy for New  
5 York City to testify.

6 So the way we're going to do this, I  
7 see that Ms. Fauss is testifying about two items, so  
8 we're going to first do all the testimony on the  
9 Campaign Finance.

10 MS. FAUSS: Sure.

11 CHAIRPERSON FELDER: All right? And  
12 then you'll have an opportunity to testify on the  
13 others. And I want to thank the Campaign Finance  
14 Board for coming. I appreciate it very much. And for  
15 making sure that somebody on your staff remains.

16 You can begin.

17 MS. FAUSS: Thank you.

18 Good morning, Chair Felder, and  
19 members of the Governmental Operations Committee. My  
20 name is Rachael Fauss and I am the Policy and  
21 Research Associate of Citizens' Union of the City of  
22 New York, an independent non-partisan civic  
23 organization of New Yorkers who promote good  
24 government and advance political reform in our City  
25 and State. In appearing before you today, Citizens'

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2 Union expresses support for the Intro that makes  
3 necessary technical changes to the reform law passed  
4 earlier this year to strengthen the Campaign Finance  
5 Program, largely by increasing the importance of  
6 smaller donors and limiting the influence in  
7 elections of those who do business with the City.

8                   We find no problem with the  
9 clarification and tightening of the law that these  
10 changes represent. In restricting the practice of  
11 Pay To Play, Citizens' Union wants to ensure that it  
12 is sound and enforceable and doesn't place undue and  
13 unnecessary burdens on the City's oversight role and  
14 unintentionally restrict from those who do business  
15 with the City as a matter of obligation through  
16 various programs, specifically the development of  
17 affordable housing.

18                   We urge the Council to pass this  
19 intro.

20                   Okay, I'm going to move on to our  
21 testimony on the other matter at this point.

22                   CHAIRPERSON FELDER: We will hear from  
23 Mr. Jacoby --

24                   MS. FAUSS: Okay. Sorry, I  
25 misunderstood. Okay.

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2 CHAIRPERSON FELDER: Mr. Jacoby.

3 MR. JACOBY: Thank you. My name is Dan  
4 Jacoby. I'm with Democracy for New York City. Intro.  
5 586, which is now Local Law 34, was very hastily  
6 written, swiftly passed, people didn't get a real  
7 chance to figure out what it all said, and as a  
8 result we've got 651, most of which just cleans up  
9 the language and technical problems, and you've  
10 talked about it. And if that's all 651 were, I would  
11 urge swift passage, no problem. But there are  
12 substantial changes in the law made by 651 and I  
13 think we can tell from the testimony from the CFB  
14 and from the Chief Procurement Officer that we're  
15 not all certain exactly what those changes are and  
16 how they would affect the law. So, I think that we  
17 might want to slow down a little bit on that part of  
18 it, maybe split it out, whatever you find best,  
19 until we really understand what it is we're passing.

20 In addition, I want to stress that  
21 these attempts to lower the influence of the big  
22 money special interest, what they've been calling  
23 "Pay To Play," it's not really going to work. First  
24 of all, more money, far more money comes through  
25 bundling then directly from people doing business

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2 with the City. And I'm referring to an actual CFB  
3 report issued a year and a half ago on the doing  
4 business contributions.

5                   The other thing is that there is  
6 always loopholes, and one example is a 100-year-old  
7 loophole and that's that employees, the senior  
8 management and other people will funnel their  
9 contributions to lower level employees. It's been  
10 going on for 100 years, since the passage of the  
11 Tilman Act. There is nothing new there. It's still  
12 going on. It's very difficult to ferret out. It's  
13 almost impossible to catch, and it gets around the  
14 very thing you're trying to stop here with both  
15 Local Law 34 and Intro. 651. My point is it's not  
16 going to work. And it's well intentioned, it's well  
17 thought out, but it's not going to work.

18                   The real thing we need to do is pass  
19 something that's simpler, it's effective, that is  
20 working, and that's the Clean Money Clean Election  
21 system that's working in Maine, it's working in  
22 Arizona, it's significantly reducing the power of  
23 the rich lobbyists and special interests, it's a  
24 much simpler system to follow. There will be a bill  
25 introduced as soon as we can get it finished and I

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2 urge its swift passage.

3 Thank you.

4 CHAIRPERSON FELDER: Mr. Jacoby,

5 what's your solution to the bundling law?

6 MR. JACOBY: Well, I don't think there  
7 is one. And I think that's why both 586 and 651  
8 simply don't try, because how can you? You've got  
9 reporting requirements and you're trying to tighten  
10 them and everybody is trying to tighten the  
11 reporting requirements, but the fact is people get  
12 around it. You've got the House Party exemption, for  
13 example. It's easy to get around any kind of  
14 requirement.

15 CHAIRPERSON FELDER: Mr. Jacoby, do  
16 you know of any localities that have implemented  
17 your suggestions?

18 MR. JACOBY: Yes, the states of Maine  
19 and Arizona.

20 CHAIRPERSON FELDER: I'm talking about  
21 localities.

22 MR. JACOBY: Portland Oregon,  
23 Albuquerque New Mexico.

24 CHAIRPERSON FELDER: Okay. Any others?

25 MR. JACOBY: There are other places



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2 that have implemented some portion of it. They've  
3 been going back and forth for some elections and  
4 others, but those are the main places.

5 CHAIRPERSON FELDER: Well, it seems  
6 clear that with your diligence that Governor Spitzer  
7 is going to pass this legislation that you're  
8 suggesting.

9 MR. JACOBY: We hope so.

10 CHAIRPERSON FELDER: So, we don't want  
11 to waste City money by doing it twice.

12 MR. JACOBY: Well, the Governor's plan  
13 will only work for State elections. It won't affect  
14 City elections.

15 CHAIRPERSON FELDER: Oh, I see. So, in  
16 other words, you would like New York City to be  
17 like, what did you say those two towns?

18 MR. JACOBY: Albuquerque and Portland,  
19 yes. Well, actually we'd be bigger and therefore  
20 more well known.

21 CHAIRPERSON FELDER: Okay.

22 How much would it cost the City to do  
23 this?

24 MR. JACOBY: I don't think anybody has  
25 done an exact figure. My best estimate so far is it

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2 would probably come out to about, maybe as much as  
3 \$10 million a year --

4 CHAIRPERSON FELDER: No.

5 MR. JACOBY: Over what we're spending  
6 already.

7 CHAIRPERSON FELDER: So how much?

8 MR. JACOBY: Over about 40 million per  
9 four-year cycle over what we're spending already on  
10 the matching fund system.

11 I should point out, though, that when  
12 you look at what's going on, for example, in  
13 Arizona, where they're realizing now a great deal  
14 more revenue from their annual land sales because  
15 the lobbyists who used to drive the prices down no  
16 longer have the power. So, Arizona is realizing a  
17 great deal of extra revenue. There is other  
18 expenditures they don't have to make because they  
19 don't have to deal with the special interests who  
20 contribute to lots of campaigns.

21 CHAIRPERSON FELDER: All right. Well,  
22 I appreciate your testimony, and I think that some  
23 believe term limits was a good thing or a bad thing.  
24 Term limits will ensure that your suggestion, if and  
25 when it gets done, will have to be handled by the

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2 next City Council because it involves a lot of work.

3 But we appreciate your comments.

4 MR. JACOBY: Thank you, Mr. Chairman.

5 CHAIRPERSON FELDER: And if the  
6 Citizens' Union wishes to testify on the other item,  
7 we would be very happy.

8 MS. FAUSS: Thank you.

9 The other item is on requiring all  
10 City agencies to electronically transmit copies of  
11 proposals in a timely manner, as you know. And in  
12 appearing before you today we also support Intro.  
13 643. We believe that it will improve communication  
14 about an awareness of rules proposed --

15 CHAIRPERSON FELDER: Could I interrupt  
16 you, please, for a moment?

17 MS. FAUSS: Sure.

18 CHAIRPERSON FELDER: I've been told  
19 that I messed up again.

20 So, I just for the record want to say  
21 that the testimony that we're about to hear relates  
22 to Intro. 643, so that transcripts will show that.

23 MS. FAUSS: Thank you.

24 CHAIRPERSON FELDER: I apologize.

25 MS. FAUSS: No problem.



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**Testimony of Marla G. Simpson, City Chief Procurement Officer and  
Director, Mayor's Office of Contract Services, Before the City Council  
Committee on Government Operations: Int. 651 of 2007**

**December 6, 2007**

Good morning. I am Marla Simpson and I am Director of the Mayor's Office of Contract Services ("MOCS") and the City's Chief Procurement Officer. I am joined here by Anthony Crowell, Counselor to the Mayor. We thank you for the opportunity to appear today to discuss the Intro 651, a set of necessary amendments to the City's landmark "Pay to Play" legislation, Local Law 34 of 2007.

Local Law 34 (LL 34), passed by the Council and signed by the Mayor in July of this year, mandates the creation of a *Doing Business Database*, containing the names of entities and people considered to be doing business with the City, for the purpose of enforcing new limitations on campaign contributions. The Mayor's Office of Contract Services (MOCS) was given the primary responsibility to gather and process the information required to be contained in the Database.

LL 34 is to be implemented in three phases, corresponding to different types of transactions that are considered business dealings with the City. At the start of each phase, the Department of Information Technology and Telecommunications (DOITT) and the Campaign Finance Board (CFB) must certify that the database for that phase is "reasonably complete" so that the law can be enforced.

I'm pleased to report that we are well on our way to completing such a Database for phase one of the Law, commencing on January 3, 2008, which covers current City contracts, franchises and concessions. In order to create the initial Database, MOCS formed and staffed a new unit, the Doing Business Accountability Project. In the past five months the DBA Project:

- Processed more than 300,000 procurements from the 186 City agencies covered by LL 34;
- Identified 3,500 vendors that will be doing business with the City as of January 3<sup>rd</sup>; and
- Sent mailings to all those vendors to confirm or obtain the names of their principal officers, owners and senior managers.

As of yesterday, we have received replies from 1,759, or 50% of the 3,500 letters mailed. Approximately three-quarters of these vendors were already registered in the City's VENDEX database. The letters we sent those vendors simply asked for confirmation of the officer and owner names in VENDEX, and informed them that in the absence of a reply we would use the VENDEX data. The letters also asked for new information, i.e., the names of senior managers, which we do not have in our VENDEX system. For the 25% of vendors covered by LL 34 that are not already registered in VENDEX, we sent letters requesting that they supply all of the necessary principal information. Throughout December, we will continue to mail and place follow-up calls to all vendors that have not yet responded.

As a result of these efforts, we now have information on principal officers and owners, either from VENDEX or from the mailing, for more than 87% of all vendors. We expect this number to exceed 92% by the end of December. Considering that at this point we have no real enforcement mechanism, because the law has not yet gone into effect, we are very pleased with this result, and believe we will attain the "reasonably complete" standard for most categories of vendors and principals. Regarding the narrow category of "senior managers," who have historically not been listed in VENDEX, we are not likely to meet our target of January 3<sup>rd</sup> for substantial completeness. Although, let me be clear that we are well underway, thus far our mailings and phone calls have yielded approximately 40% of the needed data, and we are working to secure the remaining 60% of the information for this category as quickly as possible.

As you know, LL 34 was drafted with a phased approach. The inclusion of the names of entities and principals who seek business from the City – i.e., those who propose but may not be awarded contracts – does not occur until July 3<sup>rd</sup>. The main reason for that delay was the recognition, at the time

LL 34 was drafted, that the City has no pre-existing sources of data, such as VENDEX, on the principals of such unsuccessful proposers. Instead, we must collect those names from scratch. To do that, we need to incorporate a request for such information into our contract solicitation process – so that proposers will have to supply it up front, in order to be considered. The DBA Project, working closely with the Law Department, has already begun modifying City agencies' solicitations for that purpose, so that when July 3<sup>rd</sup> rolls around, we will be able to supply a “reasonably complete” database on this point, as well.

For the same reasons that LL 34 has a delayed effectiveness on proposer information, Int. 651 is now before you, seeking to amend the requirement for senior manager data. Just as the City has no pre-existing source of data for the names of the principals of unsuccessful proposers, so too, we have no source for the names of senior managers. Although we did not initially recognize how much the process of setting up the database would be hampered by the fact that senior managers are not listed in VENDEX, we now believe that it is important to make this amendment to the LL 34 schedule, so that manager data would be made available in phase two, as of July 3<sup>rd</sup>, rather than January 3<sup>rd</sup>. We are nonetheless confident that, even without the senior manager data, the January 3<sup>rd</sup> version of the database will still contain information plainly sufficient to meet LL 34's ambitious goal of curbing “Pay to Play” practices by those who do business with the City, if for no other reason than that it will contain the names of the entities, officers and owners to whom all of the senior managers report.

During phase one, MOCS will be able to compel all of the entities that are newly awarded contracts, franchises and concessions to provide all of the required information, including the names of their senior managers. Thus, for awards that are made from January 3<sup>rd</sup> on we anticipate a much higher compliance rate, as no new awards will be processed without obtaining complete data for LL 34. Meanwhile, we will continue to pursue the senior manager information from vendors holding contracts awarded prior to January 3<sup>rd</sup>, and we are confident that with those added months, we can move the completion rate for those pre-existing vendors to an acceptable level.

Another amendment included in Int. 651 that I'd like to mention this morning, is one that would allow the City Chief Procurement Officer to promulgate rules that would permit, in certain narrow circumstances, compliance with LL 34 to be waived. Before any such waiver, MOCS would have to show that we had made substantial efforts to obtain full compliance with LL 34's required disclosures. But if such efforts prove fruitless, the City must retain a mechanism to allow agencies to make essential purchases. As the amendment provides, a waiver could only be granted upon finding both that the agency had a compelling need for the purchase, and that no reasonable alternative existed. Waiver applications would be reported to Campaign Finance Board (CFB) at least ten days prior to any action to grant or deny them, and any entity receiving a waiver would be listed on both the MOCS and CFB websites so that the public would be aware of the possibility that contributions could continue to be made by such vendors.

The VENDEX statute contains a similar authorization to the Procurement Policy Board (PPB) for a rules-based waiver process. The PPB exercised that authority more than a decade ago, upon notice to the Council as required by the VENDEX statute. From time-to-time, I now grant VENDEX waivers under those rules. These VENDEX waiver provisions are rarely invoked, and the parallel waiver process anticipated for LL 34 data is even more narrowly drawn and more transparent.

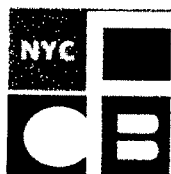
An example of a circumstance that might support a waiver could be where an agency needs to make a purchase critical to public safety or health from a sole source vendor, particularly when that entity is privately held and not required to disclose its ownership in any other context. While such an entity may readily supply information on its senior managers or officers, it might resist supplying ownership data, when such information would then become accessible to the public. On occasion, this arises when there is a foreign entity that holds all or partial ownership of a U.S.-based subsidiary, but it should be noted that such citizens from such foreign entities are otherwise barred from making campaign contributions. Another example, specifically listed in Int. 651, would be for entities whose inclusion in the database results from the City's exercise of its eminent domain powers; inasmuch as their status as an entity doing business with the City is not voluntary, they may well not cooperate with our efforts to collect data. That

said, I must emphasize that our vendor contacts to date have not yielded any instances of outright refusal to provide the necessary data. Based on our experience with VENDEX, which requests much more intrusive information on vendors and their principals, while we view the waiver provisions of Int. 651 as essential, we do not expect to invoke them on more than a handful of occasions.

As I noted earlier, we are confident that, with these amendments, the *Doing Business Database* will be certified by January 3<sup>rd</sup>, and that New York City's model campaign finance law will have been made even stronger.

Thank you. Mr. Crowell and I welcome any questions that you may have at this time.





## **New York City Campaign Finance Board**

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www.nyccfb.info info@nyccfb.info

### **Testimony of Amy Loprest, Executive Director New York City Campaign Finance Board on Intro. No. 651**

#### **City Council Committee on Governmental Operations December 6, 2007**

Good morning, Chairman Felder and committee members. I am Amy Loprest, Executive Director of the New York City Campaign Finance Board. With me is our newly appointed Deputy Executive Director, Shauna Denkensohn. Ms. Denkensohn has taken over for Carole Campolo, who recently retired. Also with me is General Counsel Sue Ellen Dodell. I am here today to testify on Intro No. 651.

We would like to thank the Council and Council staff for soliciting our participation and feedback throughout the entire legislative process. We believe Intro. No. 651 will largely resolve the technical problems contained in Local Law 34.

#### **Exempt Expenditures**

We have, in the past, raised concerns about is Local Law 34's treatment of so-called "exempt expenditures," which Intro. No. 651 will not change.

When candidates join the Campaign Finance Program, they agree to limit their overall spending as a condition of seeking public funds. Limits on the amount each campaign may spend reduce the need for candidates to engage in a never-ending chase for the large contributions that fuel the perception of corruption. The spending limit is one of the chief benefits the public receives for the investment of taxpayer dollars in the political process.

Historically, certain types of spending have not been counted against the spending limits. Over successive elections, however, a growing number of campaigns have claimed growing amounts and proportions of exempt spending. When a campaign's exempt claims have exceeded the law's "safe harbor" of 7.5 percent of total spending, the CFB has always scrutinized its spending closely.

In the interest of providing clarity and simplicity to the law, in its latest post-election report the Board recommended eliminating most of these exemptions—specifically the blanket exemptions for petitioning and compliance. To compensate, and ensure campaigns could continue to make reasonable and necessary expenditures on compliance and other hard-to-predict expenses within the spending limits, we recommended increasing the limit by a modest amount.

The Council agreed with our recommendation in substance, and responded by including provisions in Local Law 34 that we believe narrow these exemptions substantially. At the same time, the law increased the spending limits by roughly 7.5 percent, which is a greater proportion than the typical campaign has claimed as exempt.

The Board believes the language of Local Law 34 regarding the new exemptions does not provide the level of clarity we sought—particularly with regard to expenses for the post-election audit. However, the committee report for Local Law 34 reflects our shared understanding on this point:

It is not intended that exempting “expenses related to the post-election audit,” however, would permit campaigns to continue to include all compliance related expenditures as exempt. Instead campaigns would be permitted to exempt solely those expenditures related directly to a campaign’s preparation for a post-election Board audit. (Committee on Governmental Operations Report on Intro. No. 586-2007, p. 14)

To clarify, post-election spending has never counted towards the limit. The post-election audit begins after the election, and expenditures made to prepare the response have therefore been and will continue to be exempt from the spending limits.

As in the past, the Board will construe the exemptions contained in Local Law 34 narrowly to ensure that no participating campaign is allowed to gain an unfair advantage by conducting activities beyond what is allowed under the spending limits. The Board will promulgate rules reflecting our common understanding of the law’s intent as well as the need to provide campaigns with clear guidance.

### **Doing Business**

We are pleased to report that much progress has been made towards implementation of those sections of Local Law 34 dealing with persons and entities doing business with the City.

CFB staff is working closely with the Mayor's Office of Contract Services and DoITT to meet the law’s deadline for completion of the first phase of the unified doing business database. A meeting of the Board has been scheduled for January 3, 2008, the certification date contemplated in the law, and the Board anticipates issuing its certification report in conjunction with that meeting. Groundwork is also being laid for the subsequent phases of the doing business database.

### **C-SMART**

We are also happy to announce that the CFB staff has completed a redesign of our Candidate Software for Managing and Reporting Transactions (C-SMART) for the 2009 election. Several enhancements to the software were added in response to comments made by candidates after the 2005 election.

The new version of the software allows candidates to synchronize their disclosure and write checks with widely-used bookkeeping applications QuickBooks and Microsoft Money, and gives them the ability to import records from other sources, such as contributions received through a campaign web site. The new software also contains a fundraising module that will help candidates better manage their tracking of contributor information, and can easily produce and print letters to campaign contributors. It has a new, modern look and feel that should be more user-friendly and easier on the eye.

We have initiated a pilot program with seven currently active 2009 campaigns to test the new software for the January 15, 2008 filing. The candidates involved in this testing phase are a true cross-section, including four current members of the Council, as well as large and small campaigns from every borough and every covered office. We look forward to hearing feedback from all those who have agreed to take part so that we may perform any necessary fixes to C-SMART and introduce it to all candidates over the next few months.

Despite the complexity of the new law, we are working very hard to make compliance as simple as possible for all candidates. As you know, the CFB is preparing to expand our staff to meet the new and significant mandates contained in Local Law 34. We are pleased to have the continued support of the Council as we structure our agency to implement these important reforms.

Thank you for the opportunity to testify today, and we look forward to answering any questions you may have.

Dan Jacoby  
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Oral testimony on Intro 651-2007  
City Council Governmental Operations Committee  
Simcha Felder, Chair  
December 6, 2007

Intro 651 is necessary because Intro 586 was so hastily, and therefore somewhat sloppily, written and too swiftly passed, before anyone had a real chance to understand just what it said and what it meant. Most of 651 is about correcting the resulting flaws. It, too, appears headed for swift passage, and with all due respect to those who put this bill together such swift passage would be a mistake.

Yes, this bill does an excellent job of cleaning up language. If that were all that 651 did, I would heartily recommend swift passage. But this bill has new aspects to it that need careful inspection and serious debate. Specifically, sections 1 and 2 of this bill make significant changes in who does and does not meet the requirements for inclusion in the new "doing business with" databases.

Once again, I stress that the continued attempt to lower the influence of big-money special interests (or at least the "appearance" of influence) is doomed. First, far more money comes in through bundlers who do business with the city than directly from those doing business themselves<sup>1</sup>, and neither 586 nor 651 restrict bundling. Second, it doesn't take a topflight lawyer to find loopholes in this system; anyone who bothers to look up the history of campaign finance in this country can find and exploit them.

For example, people in the database can funnel their contributions through lower-level employees in their companies. It happens, and has happened for 100 years, since the passage of the Tillman Act in 1907.

I close by reiterating what I said in June: The real solution lies not in tinkering with the current failed system, but in a "Clean Money, Clean Elections" method of full public funding. It is working now in Maine and Arizona, and is starting up in Connecticut. It is the system Governor Spitzer said should be the "ultimate goal" of campaign finance reform<sup>2</sup>. A Clean Money bill will be introduced into the City Council as soon as possible; I urge you to pass it.

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<sup>1</sup> Interim Report of the NYC Campaign Finance Board on "Doing Business" Contributions, June 19, 2006, available online at [http://www.nyccfb.info/PDF/publications/doing\\_business\\_white\\_paper.pdf](http://www.nyccfb.info/PDF/publications/doing_business_white_paper.pdf).

<sup>2</sup> Governor Spitzer's 2007 State of the State address, "One New York," delivered January 3, 2007, available online at <http://www.ny.gov/keydocs/NYS-SoS-2007.pdf>.



**TESTIMONY OF  
CITIZENS UNION OF THE CITY OF NEW YORK  
ON CHANGES TO THE CITY'S CAMPAIGN FINANCE LAW**

**Before the New York City Council  
Committee on Governmental Operations  
DECEMBER 6, 2007**

Good Morning, Chair Felder, members of the Government Operations Committee, and other members of the City Council. My name is Rachael Fauss, and I am the policy and research associate of Citizens Union of the City of New York, an independent, non-partisan, civic organization of New Yorkers who promote good government and advance political reform in our city and state. For more than a century, Citizens Union has served as a watchdog for the public interest and an advocate for the common good.

In appearing before you today, Citizens Union expresses support for the Intro that makes necessary technical changes to the reform law passed earlier this year that strengthened the campaign finance program, largely by increasing the importance of smaller donors and limiting the influence in elections of those who do business with the city.

We find no problem with the clarification and tightening of the law that these changes represent. In restricting the practice of pay to play, Citizens Union wants to ensure that it is sound and enforceable, and doesn't place undue and unnecessary burdens on the city's oversight role, and unintentionally restrict from those who do business with the city as a matter of obligation through various programs, specifically the development of affordable housing.

We urge the Council to pass this Intro.

Chair Felder and other members of the City Council, Citizens Union thanks you for holding this important hearing and for making it possible for us to express our views.

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Counsel to Committee

Israel Rodriguez  
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Andrew Grossman  
Finance Division

Scott Crowley  
Finance Division



**THE COUNCIL**

**REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION**

ROBERT NEWMAN, LEGISLATIVE DIRECTOR

ALIX PUSTILNIK, DEPUTY DIRECTOR, GOVERNMENTAL AFFAIRS

**COMMITTEE ON GOVERNMENTAL OPERATIONS**

HON. SIMCHA FELDER – CHAIR

**PROPOSED**

**INT. NO. 651-A:**

By Council Member Felder (by request of the Mayor)

**TITLE:**

A Local Law to amend the administrative code of the city of New York, in relation to campaign finance.

December 18, 2007  
Committee Room

## **I. INTRODUCTION**

On Tuesday, December 18, 2007, the Committee on Governmental Operations, chaired by Council Member Simcha Felder, will consider Proposed Int. No. 651-A (“proposed bill”), a proposed bill to amend the administrative code of the City of New York (“Code”), in relation to campaign finance. The Committee conducted a hearing on a prior version of this bill on Thursday, December 6, 2007, during which the Committee received testimony from the Administration, the New York City Campaign Finance Board (“Board”), good government and advocacy groups and members of the public. Based on testimony received at that hearing and further review of the proposals, Proposed Int. No. 651-A was amended to further strengthen and clarify the proposals.

In June 2007, this Committee considered and passed Proposed Int. No. 586-A, which made various structural and procedural changes to the New York city charter and the administrative code of the city of New York to further strengthen New York City’s campaign finance system. Mayor Bloomberg signed Proposed Int. No. 586-A into law on July 3, 2007 as Local Law 34 of 2007 (“Law”).

In order to address some of the inadvertent errors in the Law, the Committee is considering the proposed bill, which would amend the Campaign Finance Act (“Act”) to ensure that: (i) the contribution limits applicable to those doing business with the city apply for an entire election cycle, meaning a primary and general election, and not for each election; (ii) the new matching level of 6:1 up to \$175 will be retroactively applied to all matchable contributions raised for the current election; (iii) during special and run-off elections those that are doing business with the City may only give one-half of the applicable doing business contribution limit; (iv) the exemption from the doing business restrictions for affordable housing developers

would only apply to landlords accepting Section 8. In addition, the bill would authorize the department of housing preservation and development (“HPD”) to consider the significance of the affordable housing program and the degree of discretion by city officials in determining which actions, transactions and agreements shall and shall not constitute such business dealings; and to (v) clarify some of the Law’s provisions.

In addition, the Administration has experienced some technical difficulties with the Law. Accordingly, the Administration is requesting amendments to the Law to: (i) delay the application of the doing business contribution cap on those who act in a “senior managerial capacity” until July 2008 because they are experiencing difficulty in obtaining this information from current City contractors and franchise and concession holders; (ii) create a mechanism to waive compliance with the “business dealings with the City” requirements in cases where a vendor refuses to disclose Vendex information, but the City needs to contract for goods, services or construction in emergency situations, for security-related reasons or goods, services or construction essential to government operations; and (iii) exempt those whose property is being taken by the City via eminent domain from the doing business contribution limits.

## **II. BACKGROUND**

The Campaign Finance Program was established in 1988 to increase participation in the electoral process regardless of access to wealth, and to reduce undue influence by small concentrations of large contributors and special interests.<sup>1</sup> Since the Program’s inception, it has proved to be a successful campaign finance program and a model for the nation.

Pursuant to Charter section 1052, the Campaign Finance Board is composed of five

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<sup>1</sup> See Proceedings of the Council of the City of N.Y., Int. No. 906-A of 1987, enacted as Local Law 8 of 1988 (codified as N.Y.C. Charter, ch. 46 and N.Y.C. Admin. Code, title 3, ch. 7).



members,<sup>2</sup> who are responsible for administering the Program in accordance with the Act, which is contained in Chapter 7 of Title 3 of the Code. The Board's powers are enumerated in subdivisions (5) through (12) of section 1052 of the Charter and throughout the Act. The Board's powers include, among other things, the power "to audit and examine all matters relating to the performance of its functions and any other matter relating to the proper administration of this chapter and of chapter 8 of title 3 of this code."<sup>3</sup>

### **III. PROPOSED INT. NO. 651-A**

Section one of the proposed bill would amend the definition of "business dealings with the city" contained in subdivision 18 of section 3-702 of the Act to clarify some of its provisions and exempt certain activity from the definition. Specifically, the bill would clarify that for purposes of the definition of "business dealings with the city," an "emergency contract or a contract procured through publicly-advertised competitive sealed bidding" would not be included in contracts covered by this definition.

In addition, the proposed bill would clarify that certain actions, transactions and agreements to provide affordable housing are not "business dealings with the city." Specifically, the proposed bill would clarify that the exemption from the doing business restrictions for affordable housing developers applies to landlords accepting Section 8. In addition, the proposed bill would authorize HPD to consider the significance of the affordable housing program and the degree of discretion by city officials in determining which actions, transactions and agreements shall and shall not constitute such business dealings. The purpose of this amendment is to ensure HPD's rules applicable to those who provide affordable housing clearly

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<sup>2</sup>See New York City Charter §1052 (2005).

<sup>3</sup>See Administrative Code of the City of New York §3-710(1) (2005).

delineate who would be and would not be considered doing business with the City.

Section one of the proposed bill would also clarify that for purposes of determining the term of the business dealings with the city with respect to contracts, in the case of “purchase contracts for goods,” the term shall be one year from the date of such purchase.

Post-enactment of the Law, the Administration raised concerns about the City’s ability to procure essential goods, services or construction such as those necessary for security or other essential government operations in cases where a vendor refuses to comply with the requirements of Vendex necessary to include such person in the doing business database. To address this concern, the Administration recommended an amendment to the Law permitting the city chief procurement officer to promulgate rules to create a process by which a person “may apply to the city chief procurement officer for a waiver from inclusion in the doing business database.” Such rules would require the city chief procurement officer to “transmit to the board a copy of any application for a waiver.” Further, the proposed bill would provide that any such waiver could not be granted until the expiration of ten days from the date such application is received by the board. The proposed bill would also require that a “waiver may be granted only after substantial efforts have been made by the chief procurement officer to obtain the information required by this law” and upon a finding that it is in the best interests of the City, which shall be based on a determination that “(i) there is a compelling need to obtain such essential goods, services or construction from the person seeking the exemption and (ii) no other reasonable alternative exists in light of such considerations as cost, uniqueness and the critical nature of such goods, services or construction to the accomplishment of the purchasing agency’s mission.” The proposed bill would provide that such “a waiver may be granted when a person is doing business with the city by virtue of the city’s exercise of its powers of eminent domain.”

Finally, the proposed bill would require that the grant of a waiver be posted on the City's and the Board's website in publicly accessible locations.

Section one of the proposed bill would also amend subdivision 20 of section 3-702 of the Act to clarify that the phrase "senior managerial capacity" means a "high level supervisory capacity...in which substantial discretion and oversight is exercised over the solicitation, letting or administration of business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements and applications for land use approvals."

Section two of the proposed bill would amend subdivision 1-a of section 3-703 to clarify the permissible contribution limits that participating candidates may accept from those with business dealings with the City. The Law provided that participating candidates would be permitted to accept contributions from those with business dealing with the city for "such election." This drafting inaccuracy would have permitted a participating candidate for city council to accept two contributions totaling two hundred and fifty dollars each from a person with business dealings with the city, one for the primary election and another for the general election. This was not the intent of the drafters in negotiating and drafting the Law. This amendment would correct this error and ensure that similar to the limits applicable to non-doing business contributions, a candidate may only accept the applicable contribution limit from a person with business dealings with the city for "all covered elections held in the same calendar year."

In addition, section two of the proposed bill would specify that in cases of a run-off primary, additional day for voting pursuant to state election law, special election to fill a vacancy, run-off special election to fill a vacancy, delayed or otherwise postponed election, or election held pursuant to court order which is a covered election and in which the candidate

seeks nomination for election or election the candidate may only accept one-half of the applicable doing business contribution limit. This amendment ensures that the doing business contribution limits applies in the same manner as the non-doing business contribution limits in a run-off election, special election to fill a vacancy, etc.

Section two of the proposed bill would also amend subdivisions 1-a and 1-b of section 3-703 of the Act to clarify that for purposes of those subdivisions the phrase “senior managerial capacity” means a “high level supervisory capacity...in which substantial discretion and oversight is exercised over the solicitation, letting or administration of business transactions with the city, including contracts, franchises, concessions, grants, economic development agreements and applications for land use approvals.”

Sections three through ten of the proposed bill would amend various sections of the Law to address minor technical and grammatical errors to make the language clearer.

Section eleven of the proposed bill would amend paragraph (a) of subdivision 2 of section 3-705 of the Act to adjust the maximum matching funds claim per contributor that a participating candidate would receive for each matchable contribution in the case of a special elections to five hundred twenty-two dollars. The purpose of this amendment is to ensure that the Board’s software is able to process these matching claims and that campaigns solicit contributions in whole dollar increments.

Section twelve of the proposed bill would amend subdivision seven of section 3-705 of the Act to make minor technical and grammatical changes to the provisions regarding any participating candidate’s signed statement attesting to the need for additional public funds.

Sections thirteen and fourteen of the proposed bill would amend paragraph (a) of subdivision 1 of section 3-706 of the Act to round the expenditure limits applicable to each

primary election, special election to fill a vacancy, and general election to the nearest thousand, which is the way the cost of living adjustment is applied to the expenditure limits and the way the Board has historically treated increases in the expenditure limits.

Sections fifteen through twenty-one of the proposed bill would amend various sections of the Law to address minor technical and grammatical errors to make the language clearer.

Sections twenty-two and twenty-three of the proposed bill would amend subparagraph (iii) of paragraph a of subdivision 3 of section 3-706 and subparagraph (iii) of paragraph b of subdivision 3 of section 3-706 to clarify that the Law's bonus match provisions are applicable to elections occurring after January 1, 2008 regardless of when the underlying contribution was raised. Section twenty-three of the proposed bill would correct a drafting error in the Law by amending subparagraph (iii) of paragraph b of subdivision 3 of section 3-706 to ensure that in cases where a participating candidate's opponent spent, contracted or has obligated to spend, or has received in loans or contributions, or both, three times more than the applicable expenditure limit, the principal committee would receive public funds in an amount not to exceed one hundred twenty-five percent of the expenditure limitation for such office. The Law, in error, specified that a participating candidate would receive public funds in an amount not to exceed two-thirds of the expenditure limit, however the two-thirds limit is applicable in cases where a participating candidate's opponent has spent, contracted or has obligated to spend, or has received in loans or contributions, or both, an amount that exceeds half the applicable expenditure limit.

Section twenty-four of the proposed bill would amend paragraph (a) of subdivision 2 of section 3-703 of the Act to change the threshold for eligibility for public funding for participating candidates in a primary or general election, or special election to fill a vacancy, to

mirror the new maximum matching fund claim of one hundred seventy-five dollars.

Accordingly, in order for a participating candidate to qualify to receive public funds the participating candidate would be required to raise the specified number of contributions (applicable to the office that the participating candidate is seeking) from the specified number of contributors in denominations of one hundred seventy-five dollars, not two hundred fifty dollars.

Thus, beginning on the effective date of this local law, matchable contributions comprised of sums of up to one hundred seventy five dollars or less will count towards the eligibility threshold in the law.

Section twenty-five of the proposed bill would amend the Law's effective date provisions in several respects. First, this section of the proposed bill would repeal section thirty-eight of the Law, which mandated that the new 6:1 matching ratio not take effect until thirty days after the first component of the doing business database was certified. Instead, section twenty-six of the proposed bill would amend section forty-one of the Law by renumbering it section forty and require that the sections of the Law relating to the new matching provisions take effect on January 1, 2008, "for all elections held on or after such effective date and shall be applicable to all public funds claims for elections held on or after such effective date, regardless of whether the claim for public fund was submitted prior to the effective date."

Second, at the request of the Administration, section twenty-five of the proposed bill would delay the implementation of the "senior managerial capacity" components of the doing business database with respect to a city contract or a city franchise or concession until the second phase of implementation of the doing business database – one year from the effective date of the Law. Third, section twenty-five of the proposed bill would address an error in the Law with respect to the deadline for certification of the lobbyist component of the doing business database.

Although it was intended that the deadline for certification of the lobbyist component of the doing business database would be six months from the effective date of the Law, in error, this language was not included. Accordingly, section twenty-five of this bill would specify that the deadline for certification of the lobbyist component of the doing business database would be six months from the enactment of the Law.

Fourth, section twenty-five of the proposed bill would make various other technical and grammatical amendments to the Law to clarify the language and numbering of the sections.

Finally, section twenty-seven of the proposed bill states that the bill would become effective immediately.

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2 CITY COUNCIL

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CITY OF NEW YORK

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THE TRANSCRIPT OF THE MINUTES

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of the

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COMMITTEE ON CIVIL RIGHTS

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(Held Jointly With)

COMMITTEE ON GOVERNMENTAL

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OPERATIONS

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December 18, 2007

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Start: 1:16 p.m.

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Recess: 2:55 p.m.

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City Hall

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Committee Room

New York, New York

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B E F O R E:

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LARRY SEABROOK

Chairperson, Civil Rights Committee

18

SIMCHA FELDER

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Chairperson, Governmental

Operations Committee

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2 A P P E A R A N C E S

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Michael Nelson

5 Hiram Monserrate

Darlene Mealy

6 Matthew Eugene

Joseph Addabbo

7 Erik Dilan

Domenic Recchia

8 Inez Dickens

Peter Vallone, Jr.

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2 A P P E A R A N C E S (CONTINUED)

3

Dr. Jeffrey F. Kraus

4 Chairman

NYC Voter Assistance Commission

5

Jane Kalmus

6 Vice Chair

NYC Voter Assistance Commission

7

Onida Coward Mayers

8 Executive Director/Coordinator

NYC Voter Assistance Commission

9

Gene Borsh

10 Director

Civic and Voter Education Initiative

11 for Russian American New Yorkers

12 Barbara Zucker

Vice President for Public Policy

13 Women's City Club of New York

14 Margaret Chen

Research Associate, Democracy Program

15 Brennan Center for Justice at NYU School of Law

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1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES

2 CHAIRPERSON FELDER: Okay, good

3 afternoon, ladies and gentlemen. There is a very  
4 important meeting taking place across the street at  
5 250 Broadway. The Co-Chair of this meeting, Council  
6 Member Larry Seabrook, should be here any moment,  
7 but in order not to keep you waiting, I'm going to  
8 read my opening statement which Council Member  
9 Seabrook can look at, if he so wishes, a little  
10 later on.

11 Good afternoon, and welcome to this  
12 joint hearing of the Committees on Governmental  
13 Operations and Civil Rights. I am Simcha Felder,  
14 Chair of the Committee on Governmental Operations,  
15 and I am joined by my colleague, Council Member Inez  
16 Dickens.

17 I want to take a moment to apologize  
18 for the last-minute location change of today's  
19 hearing, which is in order to meet an accessibility  
20 concern that could not be met at the hearing's  
21 original location across the street.

22 I would like to acknowledge the staff  
23 of the Committees and thank them for all their hard  
24 work in preparing for today's joint hearing.

25 First, with the Committee on

1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES

2 Governmental Operations, to my left is DeNora

3 Getachew, the Counsel to the Committee. And to her

4 left is Michael Cassatano, my Legislative Aid.

5 The Committee's Policy Analyst,

6 Israel Rodriguez, could not attend this hearing

7 because he is participating in another hearing with

8 the Contracts Committee.

9 With the Committee on Civil Rights, I

10 will introduce them, I'm sure Council Member

11 Seabrook will introduce them again. Damien Butvick?

12 MR. BUTVICK: Butvick.

13 CHAIRPERSON FELDER: Sorry. I'll do it

14 again. Damien Butvick, Policy Analyst to the Civil

15 Rights Committee.

16 First the Committee on Governmental

17 Operations will vote on proposed Intro. No. 651-A,

18 which is a bill that I introduced by request of the

19 Mayor.

20 This bill would amend the

21 Administrative Code of the City of New York with

22 respect to campaign finance. Specifically, this bill

23 would make various substantive and technical

24 amendments to the Campaign Finance Reform Bill

25 passed by the Committee in June of this year to

1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES

2 clarify the law and ensure that:

3 (1) the contribution limits

4 applicable to those doing business with the City

5 apply for the entire election cycle.

6 (2) the new matching level of

7 six-to-one up to \$175 would be retroactively applied

8 from the start of the current election cycle; and

9 (3) that the exemption from doing

10 business restrictions for affordable housing

11 developers would not only -- would only apply, I'm

12 sorry, would only apply to those developers who

13 participate in as-of-right non-discretionary and

14 affordable housing programs, or those which do not

15 involve significant discretion by HPD and other City

16 agencies in awarding a benefit.

17 This bill also includes the following

18 provisions included specifically at the request of

19 the Mayor:

20 (1) delay of the application of doing

21 business contribution cap on those who act in a

22 senior managerial capacity in July 2008, because

23 they are experiencing difficulty in obtaining this

24 information from current City contractors and

25 franchise and concession holders.

1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES

2 (2) create a mechanism to waive  
3 compliance with the business dealings with the City  
4 requirements in cases where a vendor refuses to  
5 disclose Vendex information, but the City needs to  
6 contract with the vendor in emergency situations for  
7 security-related reasons, or goods or services  
8 essential to government operations; and

9 (3) exempt those whose property is  
10 being taken by the City by eminent domain from the  
11 doing business contribution limits.

12 Based on the Fiscal Impact Statement  
13 provided to the Committee by the Finance Division,  
14 the bill would not have any fiscal impact on the  
15 City.

16 After the Committee voted on proposed  
17 Intro. No. 651-A, the Committees on Civil Rights and  
18 Government Operations will conduct a joint oversight  
19 hearing on the New York City Voter Assistance  
20 Commission that worked to increase voter  
21 registration across New York City, across New York  
22 City and its diverse communities.

23 The Commission is comprised of 16  
24 members and a coordinator and minimal staff who are  
25 responsible for encouraging and facilitating voter

1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES  
2 registration, voter participation by all residents  
3 in the City who are eligible to vote, carry out that  
4 mission. The Commission conducts voter registration  
5 events throughout the City.

6 In particular, September 2006, the  
7 Commission conducted its first annual Voter  
8 Awareness Month and conducted voter registration  
9 drives and voter awareness events throughout the  
10 five boroughs.

11 This year Voter Awareness Month took  
12 place during October in partnership with the City  
13 University of New York and featured events  
14 throughout the City, many of which took place on  
15 CUNY campuses.

16 I had the pleasure of attending and  
17 participating at one of the VAC events at the Marks  
18 Jewish Community House in Bensonhurst, which is  
19 located just outside my district and serves people  
20 of all backgrounds from my district and throughout  
21 South Brooklyn.

22 The event was a registration drive  
23 for new American citizens born in the former Soviet  
24 Union and is an example of how VAC has found success  
25 in maximizing its limited budget by forging

1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES  
2 partnerships with existing community organizations.

3                 Speaker Quinn and I recently made an  
4 effort to build on that model by inviting Council  
5 members to enlist community organizations in their  
6 own districts to work with VAC in preparing  
7 registration drives in advance of the upcoming  
8 January 12th, 2008 registration deadline for the  
9 February 5th, 2008 primary, residential primaries in  
10 New York City.

11                 The Committees look forward to  
12 learning more about the Commission's work and  
13 hearing testimony from the Commission, good  
14 government and advocacy groups, and members of the  
15 public about what can be done to increase voter  
16 registration and participation throughout the City.

17                 Before we begin the formal testimony,  
18 I have to make one or two comments. First of all, I  
19 think we're going to have to start the Civil Rights  
20 portion of the hearing that involves the Civil  
21 Rights Chairman who we are delighted has come.

22                 So, before we begin the formal  
23 testimony, I'd like to emphasize that it is my  
24 policy as Chair of the Governmental Operations  
25 Committee to ensure that the hearings begin on time



1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES  
2 and therefore it is my rule that only those  
3 individuals that sign up to testify within the first  
4 15 minutes of the start of the hearing will be  
5 permitted to testify. So, you have 15 minutes from  
6 20 after, which according to my calculations is  
7 1:35. And if you're not sure whether you want to  
8 testify, you should sign up and then withdraw it.  
9 But if you think you might, please sign up.

10 And I just, for those of you who may  
11 have read something about my rules, I want to go on  
12 the record as saying that I did research again for  
13 the second time to find out that according to the  
14 rules of the Council, whether it's nice or not,  
15 according to the rules of the Council, we're not  
16 obligated to take any testimony whatsoever. That  
17 doesn't mean that I'm God's gift to mankind by  
18 allowing to take testimony, I think it's important  
19 to take testimony, but I find nothing wrong, and I  
20 will continue to impose this rule and I think it  
21 would be a wonderful thing if this rule may spread  
22 throughout this entire City Council so that meetings  
23 maybe would be in a much more structured fashion and  
24 start on time. So, I don't have any problem with it.

25 And two, I feel very strongly that if

1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES  
2 somebody comes on time to a hearing, they should not  
3 have to sit through listening to somebody else's  
4 testimony who comes an hour and a half later, even  
5 if he was the Commissioner of Parks, an hour and a  
6 half later to hear somebody say something that might  
7 have been said four other times.

8                   So, with all due respect, I think  
9 that the rule is a good one, and for the next two  
10 years, at least, in this Committee we will continue  
11 to impose this rule.

12                   After that, I won't be in this job, I  
13 will be in another job, God willing. So, that's one.

14                   Additionally, witnesses, I asking you  
15 to refrain from repeated points that are made by  
16 previous witnesses. If somebody adequately made the  
17 point, it's fair to say that you either agree or  
18 disagree, and if you have something to add, that  
19 will be great.

20                   Before we continue, we just want to  
21 recognize Council Member Erik Dilan, who joined us,  
22 and Council Member Vallone who joined, Peter  
23 Vallone, Jr., who joined us.

24                   All right, so we're going to take the  
25 vote now on 651-A.

1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES

2 COUNCIL CLERK: Council Member Felder.

3 COUNCIL MEMBER FELDER: Yes.

4 COUNCIL CLERK: Dilan.

5 COUNCIL MEMBER DILAN: I vote no.

6 COUNCIL CLERK: Vallone.

7 COUNCIL MEMBER VALLONE: I'm going to

8 pass. I need to read this.

9 COUNCIL CLERK: Dickens.

10 COUNCIL MEMBER DICKENS: Yes.

11 COUNCIL CLERK: Seabrook.

12 CHAIRPERSON SEABROOK: I vote aye.

13 COUNCIL CLERK: Council Member

14 Vallone.

15 COUNCIL MEMBER VALLONE: I need to

16 read this.

17 COUNCIL CLERK: Okay.

18 CHAIRPERSON FELDER: I want to thank

19 all of the members for being here and I'm turning

20 the mic. over to the esteemed Chair of the Civil

21 Rights Committee, Council Member Larry Seabrook.

22 CHAIRPERSON SEABROOK: Good afternoon,

23 Mr. Chairman. And I certainly want to thank you and

24 I certainly want to apologize for being late, but

25 that's the scheduling that we have. It's been a

1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES  
2 little crazy.

3 But anyway, my name is Council Member  
4 Larry Seabrook. I Chair the New York City Council  
5 Committee on Civil Rights.

6 I'd like to begin by acknowledging my  
7 Co-Chair at today's hearing, Council Member Simcha  
8 Felder, and by thanking him for bringing attention  
9 to this important matter.

10 Our country has a long and shameful  
11 record of systematically disenfranchising people of  
12 color, from poll taxes, to literacy tests,  
13 institutionalized discrimination at the voting booth  
14 has left an unfortunate legacy that continues to  
15 strive to this day.

16 In this last presidential election,  
17 just 44 percent of registered African-Americans  
18 voted, along with 31 percent of Latino Americans and  
19 26 percent of Asian Americans.

20 Registration rates among these  
21 communities are equally abysmal, with 51 percent of  
22 eligible African-Americans registered, along with 38  
23 percent of Latin Americans and 31 percent of Asian  
24 Americans.

25 The federal, State and local

1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES  
2 governments have made several attempts to increase  
3 voter registration in these communities. They are  
4 woefully inadequate.

5 Failure to reach out to and mobilize  
6 communities of color further perpetuates their  
7 under-representation and the public's fear. If the  
8 government is sincere in its desire to empower all  
9 communities, then it must take bolder steps to  
10 involve its constituents in the electoral process.

11 As Chair of the Committee on Civil  
12 Rights, I'm looking forward to hearing today's  
13 testimony and to taking a closer look at the  
14 operation of the Voter Assistance Commission.

15 I'd like to thank everyone for coming  
16 out today and for joining this exceedingly important  
17 dialogue.

18 I would now like to give the floor  
19 back to my distinguished colleague, Chair of the  
20 Committee on Governmental Operation, Council Member  
21 Simcha Felder.

22 And our first panel of witnesses will  
23 be Commissioner Jane Kalmus, Jeffrey Kraus, Onida  
24 Coward Mayers.

25 COUNCIL CLERK: The Committee on

1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES  
2 Governmental Operations. Introduction 651-A. Council  
3 Member Vallone.

4 COUNCIL MEMBER VALLONE: I vote aye.

5 COUNCIL CLERK: By a vote of four in  
6 the affirmative, one in the negative and no  
7 abstentions, the item is adopted.

8 Council members, please sign the  
9 Committee report.

10 DR. KRAUS: Good afternoon,  
11 Chairpersons Felder and Seabrook, and members of the  
12 Government Operations and Civil Rights Committees of  
13 the New York City Council.

14 I am Jeffrey Kraus, Chairperson of  
15 the New York City Voter Assistance Commission.

16 I am joined this afternoon by Vice  
17 Chair Jane Kalmus, who has been a member of the  
18 Commission since its inception, and Onida Coward  
19 Mayers, who is our Executive Director.

20 We are here today to inform you about  
21 the Commission's activities and to answer your  
22 questions. According to the New York City Charter  
23 the role of the Voter Assistance Commission is to  
24 encourage and facilitate voter registration and  
25 voting by all eligible citizens residing in New York

1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES

2 Also, attached you will find a whole  
3 description of all of the events, the number of  
4 calls that come into VAC, the 3-1-1 calls. You'll  
5 also find all of the media, the hits on our website,  
6 and participation of our Commissioners and  
7 representatives.

8 I thank you.

9 CHAIRPERSON SEABROOK: Thank you very  
10 much. I just want to introduce some of the members  
11 who came in. We have Councilwoman Darlene Mealy from  
12 Brooklyn, who is a member of this Committee.  
13 Councilman Domenic Recchia from Brooklyn. And  
14 Committee member Council Member Mike Nelson from  
15 Brooklyn, as well.

16 We just have to take a vote for a  
17 minute.

18 COUNCIL CLERK: Introduction 651-A.  
19 Council Member Recchia.

20 COUNCIL MEMBER RECCHIA: Aye.

21 COUNCIL CLERK: The vote now stands at  
22 five in the affirmative, zero in the negative --  
23 excuse me. Five in the affirmative, one in the  
24 negative, zero abstentions.

25 CHAIRPERSON SEABROOK: Chairman

1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES

2                   You mentioned young people. Young  
3 people historically have been less likely to vote.  
4 It goes back to the ratification of the 26th  
5 Amendment. It seems as one grows older and one picks  
6 up the responsibilities of a house and a mortgage  
7 and having to pay taxes and things like that, that  
8 these people who at 18, 19 and 20 didn't see the  
9 reason to vote, when they get 35, 40 and 45 suddenly  
10 see the need. And I would suspect that that will be  
11 the case with this younger generation as well.

12                   CHAIRPERSON FELDER: I don't want to  
13 belabor it. I just want to say --

14                   DR. KRAUS: It's one of the reasons  
15 we've targeted the youth.

16                   CHAIRPERSON FELDER: All I'm saying to  
17 you is that it's my impression, and maybe, as you  
18 said, when you get older, maybe sometimes things  
19 seem bleaker about the younger kids, but it seems to  
20 me that things have gotten worse than they used to  
21 be in terms of young people, that even if it was  
22 never good about young people registered to vote.

23                   Before we continue, with your  
24 permission I want to just digress again for a moment  
25 to allow Council Member Addabbo, who joined us, to



1 CIVIL RIGHTS AND GOVERNMENTAL OPERATIONS COMMITTEES

2 vote on the earlier items.

3 COUNCIL CLERK: Introduction 651-A.

4 Council Member Addabbo.

5 COUNCIL MEMBER ADDABBO: I vote aye.

6 COUNCIL CLERK: The final vote on

7 Governmental Operations is now six in the

8 affirmative, one in the negative and zero

9 abstentions. Thank you.

10 CHAIRPERSON SEABROOK: Dr. Kraus, just

11 a couple of questions.

12 DR. KRAUS: Sure.

13 CHAIRPERSON SEABROOK: In line with

14 what the Councilman raised. What is the total budget

15 of VAC? What is the budget?

16 DR. KRAUS: I think you know that

17 number, right?

18 175.

19 CHAIRPERSON SEABROOK: What?

20 DR. KRAUS: 175,000.

21 CHAIRPERSON SEABROOK: 175,000. And

22 none of this is for advertising?

23 DR. KRAUS: That's correct.

24 CHAIRPERSON SEABROOK: And in reaching

25 those voters, it's the Daily News that provides this

Dan Jacoby  
47-48 43 St., Woodside, NY 11377  
917-667-2756  
www.danjacoby.com

Oral testimony on Intro 651a-2007  
City Council Governmental Operations Committee  
Simcha Felder, Chair  
December 18, 2007

## **FOR THE RECORD**

Last week I suggested that the City Council not pass this bill as quickly as the previous campaign finance bill was passed in June. I expressed concern that there could be elements of the bill that were not as they seemed. Since then, I have discovered that there is at least one glaring problem with the current bill.

The section dealing with eminent domain was written with the idea that people whose "business" with the city consists of having their property seized through the city's use of eminent domain should not have insult added to injury by having their names placed in the "doing business" database. Unfortunately, because this bill is being rushed through, the language could just as easily be interpreted to grant a waiver from the database for those who receive the seized land.

Chances are that won't happen, but if this bill is passed the law will make it possible. The real question is, what other potential time bombs are hidden in the recesses of this complex legislation? We don't know, but if the bill passes as it is currently written, we will certainly find out the hard way.

One definition of insanity is doing the same thing over and over, and expecting different results. Six months ago, this Council passed a campaign finance bill far too quickly, and it turned out to be full of problems. Now the Council is poised to do the same thing over again. What will we be dealing with six months from now?

I urge this committee to stop the insanity. Do not vote on this bill until we have a full opportunity to figure out exactly what's in it. If you must vote on this bill now, I urge you to vote "no."

1

2 CITY COUNCIL

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CITY OF NEW YORK

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THE TRANSCRIPT OF THE MINUTES

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of the

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STATED COUNCIL MEETING

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December 19, 2007

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Start: 4:37 p.m.

12

Recess: 5:55 p.m.

13

City Hall

14

Council Chambers

New York, New York

15

B E F O R E:

16

BETSY GOTBAUM

Public Advocate

17

18

COUNCIL MEMBERS: Speaker Christine Quinn

19

Joseph Addabbo

Maria Arroyo

Tony Avella

20

Charles Barron

Gale Brewer

21

Leroy Comrie

22

23

24

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1

2 A P P E A R A N C E S (CONTINUED)

3

COUNCIL MEMBERS:

4

Inez Dickens

5

Erik Martin-Dilan

Matthew Eugene

6

Simcha Felder

Lewis Fidler

7

Helen Foster

Dennis Gallagher

8

Daniel Garodnick

James Gennaro

9

Vincent Gentile

Alan Gerson

10

Eric Gioia

Sara Gonzalez

11

Vincent Ignizio

Robert Jackson

12

Letitia James

Melinda Katz

13

G. Oliver Koppell

Jessica Lappin

14

John Liu

Miguel Martinez

15

Darlene Mealy

Rosie Mendez

16

Hiram Monserrate

Michael Nelson

17

James Oddo

Annabel Palma

18

Domenic Recchia

Joel Rivera

19

Larry Seabrook

Helen Sears

20

Kendall Stewart

James Vacca

21

Peter Vallone, Jr.

Albert Vann

22

Melissa Mark-Viverito

David Weprin

23

Thomas White

David Yassky

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2 A P P E A R A N C E S (CONTINUED)

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STAFF: Billy Martin  
Council Clerk

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20 Be it known, that the Council of the  
21 City of New York most gratefully honors Hassan  
22 Askari, for his bravery on December 7, 2007.

23 Christine C. Quinn, Speaker for the  
24 Entire Council; Council Member Michael Nelson,  
25 Brooklyn; Council Member Eric Gioia, Queens; Council

9

1 STATED COUNCIL MEETING

2 Member Lew Fidler, Brooklyn; Council Member Domenic  
3 Recchia, Brooklyn; Council Member Simcha Felder,  
4 Brooklyn.

5 SPEAKER QUINN: Thank you all very  
6 much.

7 PUBLIC ADVOCATE GOTBAUM: I call  
8 together the Stated Meeting of December 19th, 2007.  
9 All rise.

10 (Pledge of Allegiance.)

11 PUBLIC ADVOCATE GOTBAUM: Thank you  
12 very much.

13 Roll call. Quiet, please.

14 COUNCIL CLERK: Addabbo.

15 COUNCIL MEMBER ADDABBO: Here.

16 COUNCIL CLERK: Arroyo.

17 COUNCIL MEMBER ARROYO: Here.

18 COUNCIL CLERK: Avella.

19 COUNCIL MEMBER AVELLA: Here.  
20 COUNCIL CLERK: Baez.  
21 (No response.)  
22 COUNCIL CLERK: Barron.  
23 COUNCIL MEMBER BARRON: Here.  
24 COUNCIL CLERK: Brewer.  
25 COUNCIL MEMBER BREWER: Here.

10

1 STATED COUNCIL MEETING  
2 COUNCIL CLERK: Comrie.  
3 COUNCIL MEMBER COMRIE: Here.  
4 COUNCIL CLERK: DeBlasio.  
5 (No response.)  
6 COUNCIL CLERK: Dickens.  
7 COUNCIL MEMBER DICKENS: Here.  
8 COUNCIL CLERK: Dilan.  
9 COUNCIL MEMBER DILAN: Here.  
10 COUNCIL CLERK: Eugene.  
11 COUNCIL MEMBER EUGENE: Here.  
12 COUNCIL CLERK: Felder.  
13 COUNCIL MEMBER FELDER: Yes.  
14 COUNCIL CLERK: Fidler.  
15 COUNCIL MEMBER FIDLER: Still here.  
16 COUNCIL CLERK: Foster.  
17 COUNCIL MEMBER FOSTER: Here.

18 COUNCIL CLERK: Gallagher.  
19 COUNCIL MEMBER GALLAGHER: Here.  
20 COUNCIL CLERK: Garodnick.  
21 COUNCIL MEMBER GARODNICK: Here.  
22 COUNCIL CLERK: Gennaro.  
23 COUNCIL MEMBER GENNARO: Here.  
24 COUNCIL CLERK: Gentile.  
25 COUNCIL MEMBER GENTILE: Here.

11

1 STATED COUNCIL MEETING  
2 COUNCIL CLERK: Gerson.  
3 (No response.)  
4 COUNCIL CLERK: Gioia.  
5 COUNCIL MEMBER GIOIA: Here.  
6 COUNCIL CLERK: Gonzalez.  
7 COUNCIL MEMBER GONZALEZ: Here.  
8 COUNCIL CLERK: Ignizio.  
9 COUNCIL MEMBER IGNIZIO: Here.  
10 COUNCIL CLERK: Jackson.  
11 COUNCIL MEMBER JACKSON: Here.  
12 COUNCIL CLERK: James.  
13 COUNCIL MEMBER JAMES: Here.  
14 COUNCIL CLERK: Katz.  
15 COUNCIL MEMBER KATZ: Here.  
16 COUNCIL CLERK: Koppell.



17 COUNCIL MEMBER KOPPELL: Here.  
18 COUNCIL CLERK: Lappin.  
19 COUNCIL MEMBER LAPPIN: Here.  
20 COUNCIL CLERK: Liu.  
21 COUNCIL MEMBER LIU: Here.  
22 COUNCIL CLERK: Mark-Viverito.  
23 COUNCIL MEMBER MARK-VIVERITO: Here.  
24 COUNCIL CLERK: Martinez.  
25 COUNCIL MEMBER MARTINEZ: Here.

12

1 STATED COUNCIL MEETING  
2 COUNCIL CLERK: McMahon.  
3 (No response.)  
4 COUNCIL CLERK: Mealy.  
5 COUNCIL MEMBER MEALY: Here.  
6 COUNCIL CLERK: Mendez.  
7 COUNCIL MEMBER MENDEZ: Here.  
8 COUNCIL CLERK: Monserrate.  
9 COUNCIL MEMBER MONSERRATE: Here.  
10 COUNCIL CLERK: Nelson.  
11 COUNCIL MEMBER NELSON: Here.  
12 COUNCIL CLERK: Palma.  
13 COUNCIL MEMBER PALMA: Here.  
14 COUNCIL CLERK: Recchia.  
15 COUNCIL MEMBER RECCHIA: Here.

16 COUNCIL CLERK: Reyna.  
17 (No response.)  
18 COUNCIL CLERK: Sanders.  
19 (No response.)  
20 COUNCIL CLERK: Seabrook.  
21 COUNCIL MEMBER SEABROOK: Here.  
22 COUNCIL CLERK: Sears.  
23 COUNCIL MEMBER SEARS: Here.  
24 COUNCIL CLERK: Stewart.  
25 COUNCIL MEMBER STEWART: Present.

13

1 STATED COUNCIL MEETING  
2 COUNCIL CLERK: Vacca.  
3 COUNCIL MEMBER VACCA: Here.  
4 COUNCIL CLERK: Vallone.  
5 COUNCIL MEMBER VALLONE: Here.  
6 COUNCIL CLERK: Vann.  
7 COUNCIL MEMBER VANN: Here.  
8 COUNCIL CLERK: Weprin.  
9 COUNCIL MEMBER WEPRIN: Here.  
10 COUNCIL CLERK: White.  
11 COUNCIL MEMBER WHITE: Here.  
12 COUNCIL CLERK: Yassky.  
13 COUNCIL MEMBER YASSKY: Here.  
14 COUNCIL CLERK: Oddo.

15 COUNCIL MEMBER ODDO: Here.  
16 COUNCIL CLERK: Rivera.  
17 COUNCIL MEMBER RIVERA: Here.  
18 COUNCIL CLERK: Speaker Quinn.  
19 SPEAKER QUINN: Here.  
20 PUBLIC ADVOCATE GOTBAUM: We have a  
21 quorum.  
22 Invocation will be done by Reverend  
23 Sheldon Williams.  
24 All rise.  
25 REVEREND WILLIAMS: Let us pray.

14

1 STATED COUNCIL MEETING  
2 Our Father and our God, we thank You  
3 and we praise You for this day. We thank You and we  
4 praise You for another opportunity to come and to  
5 meet together as one.  
6 We just pray that You would be with  
7 all of these Council members, Lord; that you would  
8 bless them in a special way and help them, give them  
9 the wisdom and knowledge necessary to make the  
10 decisions that need to be made.  
11 We also pray that You would bless  
12 their constituents and all of those who they  
13 represent; help them to be blessed by their efforts,

9 COUNCIL CLERK: Preconsidered LU 641  
10 and Reso 1192. Report of Housing Program.  
11 SPEAKER QUINN: Coupled on General  
12 Orders.  
13 COUNCIL CLERK: Report of the  
14 Committee on Governmental Operations.  
15 Intro. 651-A. Campaign Finance.  
16 SPEAKER QUINN: Amended and coupled on  
17 General Orders.  
18 COUNCIL CLERK: Report of the  
19 Committee on Housing and Buildings.  
20 Intro. 613-A. Use of explosives.  
21 SPEAKER QUINN: Amended and coupled on  
22 General Orders.  
23 COUNCIL CLERK: Report of the  
24 Committee on Land Use.  
25 LU 563 and Reso 1193, through LU 594

49

1 STATED COUNCIL MEETING  
2 and Reso 1195, on page six, UDAAPs and ULURPs.  
3 SPEAKER QUINN: Coupled on General  
4 Orders.  
5 COUNCIL CLERK: LU 616 and Reso 1196,  
6 and 619 and Reso 1197, in rem actions.  
7 SPEAKER QUINN: Coupled on General

8 Orders.

9 COUNCIL CLERK: LU 619 and Reso 1198.

10 UDAAP, Manhattan.

11 SPEAKER QUINN: Coupled on General

12 Orders.

13 COUNCIL CLERK: LU 628 and Reso 1199.

14 Enclosed sidewalk cafe.

15 SPEAKER QUINN: Coupled on General

16 Orders.

17 COUNCIL CLERK: LU 632 and Reso 1200,

18 through LU 635 and Reso 1202. Various ULURPS.

19 SPEAKER QUINN: Coupled on General

20 Orders.

21 COUNCIL CLERK: Report of the

22 Committee on Public Safety.

23 Intro. 562-A, public lewdness.

24 SPEAKER QUINN: Amended and coupled on

25 General Orders.

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2 COUNCIL CLERK: Report of the

3 Committee on Rules, Privileges and Elections.

4 M 854 and Reso 1203. Approving the

5 appointment of Shirley McRae, City Planning

6 Commission.

7 SPEAKER QUINN: Coupled on General  
8 Orders.  
9 DEPUTY MAJORITY LEADER COMRIE:  
10 General Order Calendar.  
11 COUNCIL CLERK: Resolution appointing  
12 various persons Commissioner of Deeds.  
13 SPEAKER QUINN: Coupled on General  
14 Orders.  
15 At this point I ask for a roll call  
16 on all items that have been coupled on the General  
17 Order Calendar, please.  
18 COUNCIL CLERK: Addabbo.  
19 COUNCIL MEMBER ADDABBO: Aye.  
20 COUNCIL CLERK: Arroyo.  
21 COUNCIL MEMBER ARROYO: Aye.  
22 COUNCIL CLERK: Avella.  
23 COUNCIL MEMBER AVELLA: Aye on  
24 everything, except Land Use No. 634 and Reso 1201;  
25 and Land Use No. 635, Reso 1202, I vote no.

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2 COUNCIL CLERK: Baez.  
3 (No response.)  
4 COUNCIL CLERK: Barron.  
5 COUNCIL MEMBER BARRON: I vote aye on

6 all items, except for Land Use Reso 634 -- I mean,  
7 LU 634 and Reso 1201, Columbia, and LU 635 and Reso  
8 1202, also Columbia, I vote no.

9 COUNCIL CLERK: Brewer.

10 COUNCIL MEMBER BREWER: I just want to  
11 explain a couple of things, if I can.

12 One is that regarding that Columbia  
13 vote, I know that there was much discussion today. I  
14 know these sponsors had to move quickly, but I just  
15 want to say that as somebody who tries to get as  
16 much information as possible without much  
17 information, I wish I could have had a little bit  
18 more time to be able to listen to the back and forth  
19 that Democratic Caucus usually provides.

20 Number two, I want to thank the  
21 Borough President, because he did have a very good  
22 discussion.

23 And number three, having both the  
24 Time Warner Center and 50 years ago Lincoln Center  
25 in my district, the job situation is such that at

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2 the beginning there are wonderful jobs, but somebody  
3 has to pay a whole lot of attention to make sure  
4 that the community continues to get those jobs. And

5 I know that eminent domain is a real challenge.

6 I want to thank Jordy Reyes, Home  
7 Block of Board 9 (phonetic). I can't talk much more.

8 I vote aye, but with much concern. Thank you.

9 COUNCIL CLERK: Comrie.

10 COUNCIL MEMBER COMRIE: Aye on all.

11 COUNCIL CLERK: DeBlasio.

12 COUNCIL MEMBER DEBLASIO: I would like  
13 to ask unanimous consent to vote on all Land Use  
14 Call-Ups. I vote aye on all Land Use Call-Ups. Aye  
15 on all coupled General Order matters, and I would  
16 like to wish everyone very happy holidays.

17 DEPUTY MAJORITY LEADER COMRIE: So  
18 ordered.

19 COUNCIL CLERK: Dickens.

20 COUNCIL MEMBER DICKENS: Aye on all.

21 COUNCIL CLERK: Dilan.

22 COUNCIL MEMBER DILAN: The proper  
23 title for you today, sir, is Mr. President Pro-Tem.

24 May I have a brief moment to explain  
25 my vote?

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2 DEPUTY MAJORITY LEADER COMRIE: Yes,  
3 you may.



4 COUNCIL MEMBER DILAN: Just very  
5 briefly, I would like to congratulate my colleague,  
6 Melissa Mark-Viverito on her first bill, the  
7 blasting bill. And on the 197-A, I'm very conflicted  
8 but in the end the constituents of Harlem sent to  
9 this institution Robert Jackson and Inez Dickens, I  
10 trust their judgment and their decision so that  
11 leans me to stick with them, so I vote aye on all,  
12 except for Intro. 651-A, which I vote no. Thank you.

13 COUNCIL CLERK: Eugene.

14 COUNCIL MEMBER EUGENE: Aye.

15 COUNCIL CLERK: Felder.

16 COUNCIL MEMBER FELDER: Yes.

17 COUNCIL CLERK: Fidler.

18 COUNCIL MEMBER FIDLER: Pass.

19 COUNCIL CLERK: Foster.

20 COUNCIL MEMBER FOSTER: May I be  
21 excused to explain my vote? Yes? Thank you.

22 DEPUTY MAJORITY LEADER COMRIE: Yes.

23 Yes. I'm sorry.

24 COUNCIL MEMBER FOSTER: Okay. Yes,  
25 thank you.

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2 Having been familiar with an

3 organization that has been unfriendly towards a  
4 community and then once they want something makes  
5 all the promises in the world, I'm always suspect.  
6 But in deference to Council Member Dickens, who I  
7 spoke to, I am voting aye on all, except Land Use  
8 634 and Reso 1201, and Land Use 635 and Reso 1202,  
9 of which I abstain, because if it's not good enough  
10 for my community when I voted against an  
11 organization doing what they'd like and giving us  
12 crumbs, then I don't think I'm in a position to say  
13 yes for another community.

14 COUNCIL CLERK: Gallagher.

15 COUNCIL MEMBER GALLAGHER: Aye on all.

16 COUNCIL CLERK: Garodnick.

17 COUNCIL MEMBER GARODNICK: Aye.

18 COUNCIL CLERK: Gennaro.

19 COUNCIL MEMBER GENNARO: Yes.

20 COUNCIL CLERK: Gentile.

21 COUNCIL MEMBER GENTILE: Aye.

22 COUNCIL CLERK: Gerson.

23 COUNCIL MEMBER GERSON: May I be

24 excused to explain my vote, Mr. Acting Public

25 Advocate?

2 DEPUTY MAJORITY LEADER COMRIE: Yes.

3 Yes.

4 COUNCIL MEMBER GERSON: Thank you very  
5 much.

6 I vote aye on all, but as a Council  
7 Member who represents some of our City's other  
8 finest institutions of highest learning, which have  
9 had and will have numerous Land Use issues before  
10 this body, though I'm a proud graduate of the one  
11 whose application is before us today, but I feel  
12 compelled to make the point that while voting aye, I  
13 do not look to this vote as precedent setting with  
14 respect to any other communities or any other  
15 institutions, but rather as an acknowledgment that  
16 under the very able leadership of our colleagues,  
17 Council Member Dickens and Jackson, the particulars,  
18 and with the able leadership of our Land Use Chair,  
19 Melinda Katz, the particulars of this application  
20 and the specifics have been worked out to the  
21 satisfaction of the specific needs and interests of  
22 the impacted community, and therefore, this should  
23 be viewed as a singular approval which does not set  
24 a precedent going forward.

25 As I said, I vote aye on all. Thank

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2 you.

3 COUNCIL CLERK: Gioia.

4 COUNCIL MEMBER GIOIA: I'd like to  
5 vote yes on all, with the exceptions of Land Use 634  
6 and Reso 1201, and Land Use 635 and Reso 1202, on  
7 which I abstain. I'd like to wish everyone a very  
8 happy and blessed holiday and Happy New Year, Mr.  
9 President Pro-tem. Thank you.

10 COUNCIL CLERK: Gonzalez.

11 COUNCIL MEMBER GONZALEZ: Aye on all.

12 COUNCIL CLERK: Ignizio.

13 COUNCIL MEMBER IGNIZIO: No on 651-A;  
14 no on 634 and companion Resolution 1201; no on 635  
15 and companion Resolution 1202. And a happy holidays  
16 to all.

17 COUNCIL CLERK: Jackson.

18 COUNCIL MEMBER JACKSON: Aye on all.

19 COUNCIL CLERK: James.

20 COUNCIL MEMBER JAMES: May I be  
21 excused to explain my vote?

22 DEPUTY MAJORITY LEADER RIVERA: Yes.

23 COUNCIL MEMBER JAMES: According to a  
24 recent newspaper today, two more members of the West  
25 Harlem Local Development Corporation quit, a Board

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2 chosen to represent the community in talks with  
3 Columbia, they quit in protest over the rushed  
4 process.

5 Last month three LDC Board members  
6 resigned in order to criticize the secret  
7 negotiations, which they say were designed to buy  
8 the community's acquiescence.

9 This process has minimized the  
10 community's 197-A plan and the input of Manhattan's  
11 Community Board 9.

12 We need to support and put forward  
13 community planning. We need to stop making a mockery  
14 of the City Charter and our Community Boards.

15 Columbia University's proposed  
16 rezoning will forever, forever change the character  
17 of that community.

18 Columbia University has an obligation  
19 to develop and expand in a manner that is  
20 compatible, with the interest of West Harlem, such  
21 is not the case today.

22 And lastly, from Queens to Brooklyn,  
23 from the proposed Atlantic Yards to Coney Island,  
24 and West Harlem today is just yet another example of  
25 the threat and/or, I would argue, the abuse of

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2 eminent domain. Your house today, my house tomorrow.  
3 Your business is not your own. This is the Columbia  
4 University -- excuse me. The Columbia University and  
5 the community would be much better served were they  
6 to integrate rather than dominate, swallow,  
7 subjugate or control the neighboring community.

8                   And, so, I say, let the market  
9 control, let them negotiate with residents, let them  
10 negotiate with businesses, without the undue  
11 influence, the undue pressure of  
12 government-sponsored threats, politely referred to  
13 as "eminent domain."

14                   And I say to the residents, don't  
15 worry, you'll join Brooklyn and we'll see them in  
16 court.

17                   I vote yes on everything; and I vote  
18 no on Reso 634, LU 634, Reso 1201; LU 635, Reso  
19 1202, on those I vote no. Everything else, I vote  
20 aye.

21                   I congratulate Shirley McRae today on  
22 her appointment to the Planning Board, and I just  
23 want to thank this Speaker and all the staff for  
24 working with us with respect to the lien sales. I  
25 was glad we were able to negotiate out those

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2 homeowners who are low income and senior citizens.

3 I thank you very much, and everyone  
4 have a happy holiday.

5 DEPUTY MAJORITY LEADER COMRIE: Quiet,  
6 please. Quiet, please.

7 COUNCIL CLERK: Katz. Council Member  
8 Katz.

9 COUNCIL MEMBER KATZ: Aye on all.

10 COUNCIL CLERK: Koppell.

11 COUNCIL MEMBER KOPPELL: On 651-A I  
12 vote no; on 613-A, I abstain. On all other matters  
13 on the General Order calendar, I vote aye.

14 COUNCIL CLERK: Lappin.

15 COUNCIL MEMBER LAPPIN: With a big  
16 congratulations to Council Member Mark-Viverito, I  
17 vote yes.

18 COUNCIL CLERK: Liu.

19 COUNCIL MEMBER LIU: Yes.

20 COUNCIL CLERK: Mark-Viverito.

21 COUNCIL MEMBER MARK-VIVERITO: Could I  
22 please be excused to explain my vote?

23 DEPUTY MAJORITY LEADER COMRIE: Yes.

24 COUNCIL MEMBER MARK-VIVERITO: Being  
25 an alum of Columbia University, I'm quite familiar

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2 with the fact that they don't have a very good  
3 reputation in the community.

4 Having said that, I do have complete  
5 confidence and faith in the time and the effort that  
6 have been put in by our two colleagues, and out of  
7 respect for those efforts, I will vote aye on this  
8 project.

9 So, having said that, I vote aye on  
10 all.

11 COUNCIL CLERK: Mealy.

12 (No response.)

13 COUNCIL CLERK: Mendez.

14 COUNCIL MEMBER MENDEZ: I vote aye on  
15 all, and I abstain on Land Use matters 634 and 635  
16 and Reso 1201 and 1202.

17 COUNCIL CLERK: Monserrate.

18 COUNCIL MEMBER MONSERRATE: Yes, I  
19 vote no on 651-A, and I abstain on LU 632, 634, 635  
20 and the accompanying resolutions, and I vote  
21 affirmative on the rest.

22 COUNCIL CLERK: Palma.

23 COUNCIL MEMBER PALMA: Aye.

24 COUNCIL CLERK: Council Member Liu.



25 COUNCIL MEMBER LIU: I apologize, I

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2 request unanimous consent to vote yes on all Land  
3 Use Call-Ups.  
4 DEPUTY MAJORITY LEADER COMRIE: So  
5 ordered.  
6 COUNCIL MEMBER LIU: I vote aye on all  
7 Land Use Call-Ups.  
8 COUNCIL CLERK: Recchia.  
9 COUNCIL MEMBER RECCHIA: Aye.  
10 COUNCIL CLERK: Seabrook.  
11 COUNCIL MEMBER SEABROOK: Aye.  
12 COUNCIL CLERK: Stewart.  
13 COUNCIL MEMBER STEWART: With  
14 congratulations to Jackson and Dickens, I vote aye  
15 on all.  
16 COUNCIL CLERK: Vacca.  
17 COUNCIL MEMBER VACCA: Aye on all.  
18 COUNCIL CLERK: Vallone.  
19 COUNCIL MEMBER VALLONE: May I be  
20 temporarily excused, Mr. Grand --  
21 DEPUTY MAJORITY LEADER COMRIE: So  
22 ordered.  
23 COUNCIL MEMBER VALLONE: Thank you.

24 I, too, have some serious problems  
25 with the way eminent domain was used in this matter,

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2 but out of deference to Council Members Jackson,  
3 Dickens and Katz, I will abstain on 634, Land Use  
4 635 and Resos 1201, 1202; and vote aye on the rest.  
5 Thank you.

6 COUNCIL CLERK: Vann.

7 COUNCIL MEMBER VANN: May I be excused  
8 to explain my vote?

9 DEPUTY MAJORITY LEADER COMRIE: Sure.

10 COUNCIL MEMBER VANN: Yes, I had to  
11 leave the room for a moment and I was unclear to  
12 whether or not 656 had been coupled on General  
13 Orders. It has been? It has been.

14 Having said that, I'd like to be  
15 recorded in the no in Intro. 656. I'm under the  
16 impression that my community which is really  
17 overwhelmed with predatory lenders, that many of our  
18 two- and three- and four-family homes, the  
19 homeowners are really overwhelmed in trying to meet  
20 their payments, having averted the lien sale, which  
21 is why many of them got involved in predatory  
22 lending in the first place, and, so, they're having

23 a very difficult time trying to maintain their  
24 houses with the existing revenue that they have, and  
25 information from those who are developing homes in

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2 the community indicate that any additional lien,  
3 water lien or any other additional lien, including  
4 increased fuel costs, will be devastating. So, to  
5 protect my community as best I can, I vote no on  
6 Intro. 656.

7 To support, I vote aye on the other  
8 items. Thank you.

9 COUNCIL CLERK: Weprin.

10 COUNCIL MEMBER WEPRIN: Aye on all.

11 COUNCIL CLERK: White.

12 COUNCIL MEMBER WHITE: May I request  
13 unanimous consent to vote on all Land Use items?

14 DEPUTY MAJORITY LEADER COMRIE: So  
15 ordered.

16 COUNCIL MEMBER WHITE: I abstain on LU  
17 632 and its companion Resolution 1200. I abstain  
18 from LU 634, Resolution 1201; and I abstain from LU  
19 635 and Reso -- oh -- and I abstain on 635 and Reso  
20 1202, and I vote aye on all coupled General Orders.

21 COUNCIL CLERK: Yassky.

22 COUNCIL MEMBER YASSKY: I vote aye on  
23 all. I just want to say on the Columbia item, you  
24 know, I congratulate my colleagues, Council Member  
25 Dickens and Jackson and of course the Speaker --

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2 DEPUTY MAJORITY LEADER COMRIE: Quiet,  
3 please. Quiet, please.

4 COUNCIL MEMBER YASSKY: -- And the  
5 Land Use Chair.

6 DEPUTY MAJORITY LEADER COMRIE: I know  
7 it's late but he needs to be heard.

8 COUNCIL MEMBER YASSKY: I do need to  
9 be heard. Thank you, Mr. Chair.

10 And the product I think is excellent  
11 for the City to have Columbia be able to grow.

12 I just do want to register my  
13 concerns for future things with the process of  
14 community benefits agreements, kind of replacing  
15 ULURPs. And I understand that here the Council and  
16 the Speaker I think played an extremely useful role  
17 in pushing this process forward, but I think that we  
18 as an institution should think through whether  
19 that's a good way to go, because I do worry about  
20 it, replacing what is a very solid Land Use process

21 and for future items, so I just want to register  
22 that concern. And as well, with having kind of a  
23 threat of eminent domain being used by, you know, to  
24 push something forward, I'd like to see that in the  
25 future the Administration very, very much more

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2 reluctant to start with that.

3                   So, I just want to register those  
4 items. And I want to, on the water lien side, I just  
5 want to thank the Speaker and the Finance Chair and  
6 Mike Keogh, the Finance Director, for, particularly  
7 for including the provision about relief from lien  
8 sales for low-income seniors. I think that will  
9 prove to be very important to some very distressed  
10 folks. So, I just want to thank them for doing that.  
11 Thank you.

12                   COUNCIL CLERK: Fidler.

13                   COUNCIL MEMBER FIDLER: I know it's  
14 late, and the amount of greenhouse gases that have  
15 been emitted in this room already is extraordinary,  
16 but I do have to ask permission to explain my vote?

17                   DEPUTY MAJORITY LEADER COMRIE: So  
18 ordered.

19                   COUNCIL MEMBER FIDLER: First, I want

20 to say that the Land Use planning and policy aspects  
21 of the Columbia project I believe are all good, and  
22 the work that's been done by the Speaker, Council  
23 Members Jackson, Dickens and Katz is extraordinary.

24 But for reasons that haven't been  
25 discussed yet on this floor today, and as a matter

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2 of very, very deep conscience, I cannot vote for it.

3 Some people believe that a college  
4 campus is a place where there should be an open and  
5 free discourse of all ideas. I don't exactly agree  
6 with that.

7 I think a college campus is a place  
8 where we pursue the highest ideals, and the best  
9 ideas, and when it comes to that test, Columbia  
10 University has failed miserably.

11 They have invited to their campus a  
12 hate monger, a homophobe, a Holocaust denier, and  
13 they have given him a platform of credibility that I  
14 think is shameful. And I take that in the context,  
15 as some of us remember four years ago being  
16 approached by Columbia University students in  
17 Project David, who felt that as students in the  
18 Middle East Studies Department at Columbia, they

19 could not freely express their support for Israel  
20 without being discriminated against, and denied  
21 their academic freedom, and in an action that could  
22 only put the capital Hu in Hutspa, Columbia  
23 self-investigated, self-exonerated, and issued the  
24 report during a recess period when the students who  
25 were the victims were not on campus or in town. I am

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2 voting yes on all coupled General Orders, other than  
3 Land Use 634 and 635, Resos 1201 and 1202, on which  
4 I vote no. And I cast those votes for the students  
5 in Project David, I cast those votes for academic  
6 freedom, I cast those votes for the shackled women  
7 in Iran, for the closeted, fearful gay people in  
8 Iran, for people who oppose the politics of hate and  
9 terror, for people who abhor tyranny and for people  
10 who adore human rights.

11 I thank you for your indulgence, and  
12 I vote no on those items.

13 COUNCIL CLERK: Oddo.

14 COUNCIL MEMBER ODDO: May I have two  
15 minutes to sort of reminisce?

16 DEPUTY MAJORITY LEADER COMRIE: So  
17 ordered.

18 COUNCIL MEMBER ODDO: I'm glad I'm  
19 following Council Member Fidler, because as you  
20 know, he's one of my best friends in this body and  
21 I'm proud of what he just said.

22 This summer will be my 20th  
23 anniversary of graduating Fordham University, and 20  
24 years is a long time, but I remember as it was  
25 yesterday, and I remember how quickly it went. And

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2 for those of us who were term limited and leaving  
3 this body in two years, today is sort of like the  
4 last exam of second semester of sophomore year. We  
5 have two more years of the privilege of being in  
6 this body and working together, and today I think  
7 was a good day for this body. The debate, the lively  
8 debate, even when it got a little excitable, I  
9 enjoyed it. And I just say to all my colleagues in  
10 this festive time of year, we have two more years to  
11 do what's right by this City, two more years to do  
12 what we think is right in our hearts, and two more  
13 years to hopefully have some fun together. I will be  
14 voting no on Intro 651-A, yes on all others.

15 Have a happy holiday and a Merry  
16 Christmas and God bless all of you.



17 COUNCIL CLERK: Speaker Quinn.

18 SPEAKER QUINN: Yes on all. And I just  
19 want to remind folks that the Council's holiday  
20 party is starting in 15 minutes. Starting in 15  
21 minutes over at the Surrogates Court House, so I  
22 would urge everyone to head over there as soon as we  
23 wrap things up here, and a happy holidays and happy  
24 New Year to all.

25 DEPUTY MAJORITY LEADER COMRIE:

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2 Members, we still have a resolution to vote on, so  
3 please bear with us while we do the tally. Quiet in  
4 the room, please. We still have another item of  
5 business to vote on.

6 Okay, quiet, please.

7 All items on today's General Order  
8 calendar were adopted by a vote of 46 in the  
9 affirmative, zero in the negative, zero extensions;  
10 with the exception of Intro. 651-A, which was  
11 adopted by a vote of 41 affirmative, five negative  
12 and zero abstentions; Intro. 656, which was adopted  
13 by a vote of 45 affirmative, one negative, zero  
14 abstentions; Intro. 613-A, which was adopted by a  
15 vote of 45 affirmative, zero negative, one

16 abstention; Land Use 632 and Resolution 1200, which  
17 was adopted by a vote of 44 affirmative, zero  
18 negative, two abstentions; and Land Use 634,  
19 Resolution 1201, and Land Use 635, Resolution 1202,  
20 which was adopted by 35 affirmative, five negative  
21 and six abstentions.

22 Revised Land Use Call-Up vote is 45  
23 affirmative and zero negatives -- 46 affirmative and  
24 zero negative.

25 Introduction and Reading of Bills.

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2 SPEAKER QUINN: All bills are referred  
3 to committees as indicated on the agenda.

4 DEPUTY MAJORITY LEADER COMRIE: We  
5 have a resolution.

6 Quiet, please.

7 Discussion of Resolutions.

8 No. Seeing no discussions --

9 (Outburst in audience.)

10 DEPUTY MAJORITY LEADER COMRIE: Quiet,  
11 please. Quiet, please. Quiet, please. Can we just  
12 let them out? Quiet, please.

13 SPEAKER QUINN: Get quiet in the  
14 Chambers.

Int. No. 192

By The Speaker (Council Member Quinn) and Council Members Arroyo, Avella, Brewer, Fidler, Garodnick, Gonzalez, James, Koppell, Lappin, Mark-Viverito, Martinez, McMahon, Nelson, Palma, Weprin, White Jr., Liu, Vacca and The Public Advocate (Ms. Gotbaum) (in conjunction with the Mayor)

A Local Law to amend the administrative code of the city of New York in relation to campaign contributions by lobbyists.

Be it enacted by the Council as follows:

Section one. Section 3-219 of the administrative code of the city of New York is amended by adding a new subdivision h to read as follows:

h. To provide the statement identifying his or her status as a lobbyist to a participating candidate pursuant to subdivision one of section 3-720 of the administrative code.

§2. Subdivision 3 of section 3-702 of the administrative code of the city of New York, as amended by local law number 58 for the year 2004, is amended, and new subdivisions 16 and 17 are added to such section to read as follows:

3. The term “matchable contribution” shall mean (i) a contribution, (ii) contributions or (iii) a portion of a contribution or contributions, not greater than the applicable contribution limitation set forth in paragraph (f) of subdivision one of section 3-703 for all covered elections held in the same calendar year, made by a natural person resident in the city of New York to a participating candidate which has been reported in full to the campaign finance board in accordance with subdivision six of section 3-703 by the candidate’s principal committee and has been contributed on or before December thirty-first in the year of such election that may be matched by public funds in accordance with the provisions of this chapter. Any contribution, contributions, or a portion of a contribution determined to be invalid for matching funds by the

board may not be treated as a matchable contribution for any purpose. A loan may not be treated as a matchable contribution. The following contributions are not matchable:

(a) in-kind contributions of property, goods, or services;

(b) contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value;

(c) contributions in the form of the purchase price paid for or otherwise induced by a chance to participate in a raffle, lottery, or a similar drawing for valuable prizes;

(d) money order contributions from any one contributor that are, in the aggregate, greater than \$100;

(e) contributions from individuals under the age of eighteen years; [and]

(f) contributions from individual vendors to whom the participating candidate or his or her principal committee makes an expenditure, in furtherance of the nomination for election or election covered by the candidate's certification, unless such expenditure is reimbursing an advance; and

(g) contributions from a lobbyist or person affiliated with a lobbyist.

16. The term "lobbyist" shall mean a lobbyist as defined in section 3-211 of this title. For the purposes of this subchapter, when a lobbyist is a person, the term "person affiliated with a lobbyist" shall mean the spouse or domestic partner and unemancipated children of a lobbyist. When a lobbyist is an organization, the term "lobbyist" shall mean only that division of the organization that engages in any lobbying activities or whose employment relates to the lobbying activities of the organization and the term "person affiliated with a lobbyist" shall mean any officer or employee of such lobbyist who engages in any lobbying activities or who is employed

1 in an organization's division that engages in lobbying activities of the organization and the  
2 spouse or domestic partner and unemancipated children of such officers or employees.

3 17. The term "lobbying" or "lobbying activities" shall mean lobbying and lobbying  
4 activities as defined in section 3-211 of this title.

5 §3. Paragraph (a) of subdivision 6 of section 3-703 of the administrative code of the city  
6 of New York, as amended by local law numbers 58 and 59 for the year 2004, is amended to read  
7 as follows:

8 (a) Each participating or limited participating candidate and his or her principal  
9 committee, and each non-participating candidate and his or her authorized committees shall  
10 report to the board every contribution, loan, guarantee, or other security for such loan received  
11 by the candidate and such committee, the full name, residential address, occupation, employer,  
12 and business address of each contributor, lender, guarantor, or provider of security and of each  
13 person or entity which is the intermediary for such contribution, loan, guarantee, or other  
14 security for such loan, whether such contributor, lender, guarantor, or provider of security  
15 reported they were a lobbyist or a person affiliated with a lobbyist during the calendar year in  
16 which the contribution or loan was made, and every expenditure made by the candidate and such  
17 committee, including expenditures not subject to section 3-706. Disclosure reports shall be  
18 submitted at such times and in such form as the board shall require and shall be clearly legible.

19 §4. Subdivision 8 of section 3-708 of the administrative code of the city of New York, as  
20 amended by local law number 60 for the year 2004, is amended to read as follows:

21 8. The board shall have the authority to promulgate such rules and regulations and  
22 provide such forms as it deems necessary for the administration of this chapter. The board shall  
23 promulgate regulations concerning the form in which contributions and expenditures are to be

1 reported, the periods during which such reports must be filed and the verification required. The  
2 board shall require the filing of reports of contributions and expenditures for purposes of  
3 determining compliance with paragraph (f) of subdivision one of section 3-703, section 3-706,  
4 [and] section 3-718, [and] section 3-719, and section 3-720 in accordance with the schedule  
5 specified by the state board of elections for the filing of campaign receipt and expenditure  
6 statements.

7 §5. Subdivision 2 of section 3-710 of the administrative code of the city of New York is  
8 amended by adding a new paragraph (d) to read as follows:

9 (d) Notwithstanding any other provision of law, rule or regulation, a participant or his or  
10 her principal committee shall not be required to repay to the board any public matching funds  
11 that were paid to the participant or his or her principal committee by the board based on  
12 contributions from a lobbyist or person affiliated with a lobbyist. Such payment may only be  
13 deducted by the board from a subsequent payment, if any.

14 §6. Chapter 7 of title 3 of the administrative code of the city of New York is amended by  
15 adding a new section 3-720 to read as follows:

16 §3-720 Lobbyists. 1. Each participating candidate and his or her principal committee  
17 shall obtain from every contributor, lender, guarantor, or provider of security providing a  
18 contribution or loan, or guarantee or other security for such loan, a statement, in a form  
19 prescribed by the campaign finance board, as to whether such contributor, lender, guarantor, or  
20 provider of security was a lobbyist or a person affiliated with a lobbyist during the calendar year  
21 in which such contribution or loan was made. The board may provide that such information be  
22 provided on the same form providing information as to the contributor's residence and  
23 employment. The failure of a contributor to identify himself or herself as a lobbyist or a person

1 affiliated with a lobbyist, or the unintentional submission by a candidate for matching funds of a  
2 contribution by a lobbyist or a person affiliated with a lobbyist, shall not result in any civil  
3 penalty being assessed against a candidate or principal committee. The city clerk shall, at the  
4 board's request, provide appropriate assistance to the board in determining whether a lobbyist or  
5 person affiliated with a lobbyist has complied with the requirements of this section.

6 2. The board shall make available to the public, no less than quarterly and on at least a  
7 monthly basis during the five months preceding the general election for city offices and on at  
8 least a weekly basis during the month preceding the primary election for such offices and the  
9 month preceding the general election, information relating to lobbyists and persons affiliated  
10 with lobbyists that has been ascertained by the board pursuant to this section or subdivision six  
11 of section 3-703 of this chapter. Such information shall be organized in a clear and  
12 understandable format, and shall be as current as may be practicable.

13 §7. If any provision of this local law, or any amendments thereto, shall be held invalid or  
14 ineffective in whole or in part or inapplicable to any person or situation, such holding shall not  
15 affect, impair or invalidate the remainder of this local law, and all other provisions thereof shall  
16 nevertheless be separately and fully effective and the application of any such provision to other  
17 persons or situations shall not be affected.

18 §8. This local law shall take effect on the ninetieth day after it shall have become a law  
19 and shall be applicable to all receipts, expenditures, and public funds claims for elections held  
20 after such effective date provided that, upon enactment of this local law, the relevant city  
21 agencies shall take all necessary steps, including but not limited to the promulgation of forms  
22 and rules, to ensure the prompt implementation of this local law upon its effective date.

DeNora M. Johnson

Sheila Horgan  
Legislative Policy Analyst



**THE COUNCIL**

**REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION**

Robert Newman, Legislative Director

**COMMITTEE ON GOVERNMENTAL OPERATIONS**

Simcha Felder, Chair

April 3, 2006

**INT. NO. 190:** By The Speaker (Council Member Quinn) (in conjunction with the Mayor)

**TITLE:** A Local Law to amend the administrative code of the city of New York in relation to the reporting of lobbyist activities and the enforcement of the lobbying law.

**INT. NO. 191:** By The Speaker (Council Member Quinn) (in conjunction with the Mayor)

**TITLE:** A Local Law to amend the administrative code of the city of New York and the New York city charter, in relation to gifts by lobbyists.

**INT.NO. 192:** By The Speaker (Council Member Quinn) (in conjunction with the Mayor)

**TITLE:** A Local Law to amend the administrative code of the city of New York in relation to campaign contributions by lobbyists.



## **I. Lobbying Reform Background**

Lobbying scandals on the federal and state level, such as the Jack Abramoff lobbying scandal in 2005 (“Abramoff scandal”), have reduced the public’s trust in its elected officials. The Abramoff scandal involved allegations that lobbyists illegally gave federal legislators gifts and made campaign donations in return for votes or support of legislation.<sup>1</sup> While the legislators argued there was no undue influence as a result of these gifts, these accusations raised serious questions of impropriety.

With the Abramoff scandal as a backdrop, City Council Speaker Christine Quinn and Mayor Michael Bloomberg introduced legislation to reform the city’s lobbying laws. The proposed reforms seek to reduce the impact of lobbying culture and special interests in City Hall and strengthen the integrity, transparency and accessibility of city government for its constituents.<sup>2</sup>

## **II. New York City Lobbying Laws**

Under the current New York City lobbying laws, which are contained in subchapter 2 of chapter 2 of title 3 of the administrative code of the city of New York (“administrative code”), the city clerk is responsible for enforcing compliance with the requirements of the lobbying laws.<sup>3</sup> One of the city clerk’s responsibilities is to keep statements of registration filed annually

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<sup>1</sup> See [http://en.wikipedia.org/wiki/Abramoff-Reed\\_Indian\\_Gambling\\_Scandal](http://en.wikipedia.org/wiki/Abramoff-Reed_Indian_Gambling_Scandal)

<sup>2</sup> See Press Release, The Council of the City of New York, Office of Communications, Speaker Quinn & Mayor Bloomberg Introduce Lobbying Reforms; Speaker Presents Rules Changes Establishing Parameters for Lobbyists’ Access to Council Members (Feb.16, 2006) (available at: [http://www.nyccouncil.info/pdf\\_files/reports/02-16\\_06\\_loybbyrform.pdf](http://www.nyccouncil.info/pdf_files/reports/02-16_06_loybbyrform.pdf)); see also Press Release, Office of the Mayor, Mayor Bloomberg and Speaker Quinn Unveil Comprehensive and Groundbreaking Reform Package of Lobbying Reform (Feb. 16, 2006) (available at: <http://www.nyc.gov>).

<sup>3</sup> Administrative Code §3-212

by lobbyists open to public inspection for a period of five years.<sup>4</sup> The lobbyists' annual statement of registration must include:

(1) the name, address and telephone number of the lobbyist; (2) the name, address and telephone number of the client by whom or on whose behalf the lobbyist is retained, employed or designated; (3) if such lobbyist is retained or employed pursuant to a written agreement of retainer or employment, a copy of such shall also be attached and if such retainer or employment is oral, a statement of the substance thereof; (4) a written authorization from the client by whom the lobbyist is authorized to lobby, unless such lobbyist has filed a written agreement of retainer or employment pursuant to paragraph three of this subdivision; (5) a description of the general subject or subjects on which the lobbyist is lobbying or expects to lobby; (6) the name of the person or agency before which the lobbyist is lobbying or expects to lobby; and (7) if the lobbyist has a financial interest in the client, direct or indirect, information as to the extent of such interest and the date on which it was acquired.<sup>5</sup>

Lobbyists are also required to report to the city clerk within thirty days after the lobbyist terminates the retainer, employment or designation for which a statement of registration was filed.<sup>6</sup>

Further, pursuant to administrative code section 3-216, if a lobbyist "in any lobbying year expends, receives or incurs combined reportable compensation and expenses in an amount in excess of two thousand dollars"<sup>7</sup> then the lobbyist must file a first periodic report with the city clerk by "the fifteenth day next succeeding the end of the reporting period on which the cumulative total for such lobbying year equalled such sum."<sup>8</sup> Additionally, any lobbyist that files a periodic report must subsequently file with the city clerk "a periodic report for each reporting period that such person expends, receives or incurs combined reportable compensation

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<sup>4</sup> Administrative Code §3-213(a) & (b)

<sup>5</sup> Administrative Code §3-213(c)

<sup>6</sup> Administrative Code §3-215

<sup>7</sup> Administrative Code §3-216(a)(1)

<sup>8</sup> Administrative Code §3-216(a)(1)

and expenses in an amount in excess of five hundred dollars for the purposes of lobbying during such reporting period.”<sup>9</sup> The periodic report must include:

(1) the name, address and telephone number of the lobbyist; (2) the name, address and telephone number of the client by whom or on whose behalf the lobbyist is retained, employed or designated; (3) a description of the general subject or subjects on which the lobbyist has lobbied; (4) the person or agency before which the lobbyist has lobbied; (5) (i) the compensation paid or owed to the lobbyist, and any expenses expended, received or incurred by the lobbyist for the purpose of lobbying. (ii) expenses required to be reported pursuant to subparagraph (i) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where such expense is more than seventy-five dollars on behalf of any one person, the name of such person shall be listed. (iii) for the purpose of this paragraph, expenses shall not include: (A) personal sustenance, lodging and travel disbursements of such lobbyist; (B) expenses, not in excess of five hundred dollars in any one calendar year, directly incurred for the printing or other means of reproduction or mailing of letters, memoranda or other written communications. (iv) expenses paid or incurred for salaries other than that of the lobbyist shall be listed in the aggregate. (v) expenses of more than fifty dollars shall be paid by check or substantiated by receipts.”<sup>10</sup>

The city clerk is required to keep the periodic reports on file and open to public inspection for five years.<sup>11</sup>

Under the lobbying laws, “every lobbyist required to file a statement of registration pursuant to section 3-213 of this subchapter or any client retaining, employing or designating a lobbyist or lobbyists, if during the year such client expended, received or incurred an amount in excess of two thousand dollars of combined reportable compensation or expenses, as provided in paragraph five of subdivision (c) of this section, for the purposes of lobbying,” is also required to file an annual report.<sup>12</sup> The annual report must be filed with the city clerk “by the fifteenth day of January next following the year for which such report is made and shall contain on an annual cumulative basis all the information required in periodic reports by section 3-216 of this

<sup>9</sup> Administrative Code §3-216(a)(2)

<sup>10</sup> Administrative Code §3-216(a)(2)(b)

<sup>11</sup> Administrative Code §3-216(d)(2)

<sup>12</sup> Administrative Code §3-217(a)(1) & (2)

subchapter.”<sup>13</sup> The annual report must contain the same information as contained in the periodic report.<sup>14</sup> Further, any statement or report that must be filed under subchapter 2 may be filed in person with the clerk or done by mail.<sup>15</sup>

Section 3-223 outlines the penalties for violation of subchapter 2.<sup>16</sup> First, a person or organization is guilty of a class A misdemeanor if he or she knowingly or willfully violates any provision of subchapter 2.<sup>17</sup> The person or organization will also be “subject to a civil penalty, in an amount not to exceed fifteen thousand dollars, to be assessed by the city clerk, or an order to cease all lobbying activities subject to the jurisdiction of the city clerk for a period of time as determined by said clerk not to exceed sixty days, or both such civil penalty and order.”<sup>18</sup> Second, if a person or organization “violates a cease and desist order of the city clerk issued under subdivision (a) or enters into a contingency agreement or accepts or pays any contingency fees as proscribed in section 3-218 of this subchapter, shall be guilty of a class A misdemeanor.”<sup>19</sup> Also, the person or organization could be subject to a civil penalty “in an amount not to exceed fifteen thousand dollars, to be assessed by the city clerk.”<sup>20</sup> Third, if a person or organization fails to file a statement or report after notification by the city clerk it “shall constitute a class A misdemeanor.”<sup>21</sup> Additionally, the person or organization may be subject to a civil penalty of up to ten thousand dollars.<sup>22</sup> Fourth, if a person or organization violates any provision of subchapter 2 not punishable under subdivisions a, b, or c of section 3-223 then such person shall be subject to the imposition, by the city clerk, of a civil penalty of up

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<sup>13</sup> Administrative Code §3-712(b)

<sup>14</sup> See supra footnote 8 and supporting text

<sup>15</sup> Administrative Code §3-221

<sup>16</sup> Administrative Code §3-223

<sup>17</sup> Administrative Code §3-223(a)

<sup>18</sup> Id.

<sup>19</sup> Administrative Code §3-223(b)

<sup>20</sup> Id.

<sup>21</sup> Administrative Code §3-223(c)

<sup>22</sup> Id.

to ten thousand dollars.<sup>23</sup> However, under section 3-223(e), the city clerk cannot assess any penalty for violation of subdivision a, b, c, or d until 14 days after written notice of the violation is given.<sup>24</sup>

### III. New York City Conflict of Interest and Campaign Financing Laws

Under New York city laws governing conflicts of interest, it is impermissible for a public servant to accept any “valuable gift, as defined by rule of the [Conflicts of Interest] board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.”<sup>25</sup> The Conflicts of Interest Board (“COIB”) has defined a “valuable gift” as “any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form.”<sup>26</sup>

Under the New York City campaign finance act, a candidate may be eligible for optional public financing if they meet certain requirements.<sup>27</sup> Once the candidate for nomination for election or election has met the requirements contained in section 3-703 of the administrative code, the next inquiry is whether the contribution received can be matched under the program with public funds.<sup>28</sup> In order to obtain campaign finance matching funds, a gift must be matchable.<sup>29</sup> Under the administrative code, loans and the following list are not matchable contributions:

(a) in-kind contributions of property, goods, or services; (b) contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value; (c)

<sup>23</sup> Administrative Code §3-223(d)

<sup>24</sup> Administrative Code §3-223(e)

<sup>25</sup> New York city charter §2604(b)(5)

<sup>26</sup> 53 RCNY § 1-01 (title 53 - rules of the city of new york §1-01).

<sup>27</sup> Administrative Code §3-703

<sup>28</sup> Administrative Code §3-702(3)

<sup>29</sup> Id.

contributions in the form of the purchase price paid for or otherwise induced by a chance to participate in a raffle, lottery, or a similar drawing for valuable prizes; (d) money order contributions from any one contributor that are, in the aggregate, greater than \$100; and (e) contributions from individuals under the age of eighteen years.<sup>30</sup>

Under the campaign financing program, each participating, limited participating, or non-participating candidate and his or her principal committee must complete a disclosure report about all “contribution, loan, guarantee, or other security for such loan received by the candidate and such committee...”<sup>31</sup> Finally, the campaign finance board has responsibility for promulgating rules and regulations and providing necessary forms to implement the program.<sup>32</sup>

#### **IV. Provisions of Int. No. 190**

Int. No. 190 would make various structural and procedural changes to the city’s lobbying laws, which if implemented would: (1) expand lobbyists’ disclosure requirements, (2) create a stronger enforcement mechanism with the city clerk, (3) double the applicable fines for violation of the law, and (4) create a commission to review the law’s efficacy and to make recommendations on ways to strengthen or improve it.

Accordingly, the bill begins by adding subdivisions (g) through (i) to section 3-211 of the administrative code. Subdivision (g) defines a “public servant” “as defined in subdivision nineteen of section two thousand six hundred one of the charter.” Pursuant to subdivision 19 of section 2601 of the charter of the city of New York (“charter”), a public servant means “all officials, officers and employees of the city, including members of community boards and members of advisory committees, except unpaid members of advisory committees shall not be public servants.”<sup>33</sup> By adopting the definition contained in Chapter 68 governing Conflicts of

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<sup>30</sup> Id.

<sup>31</sup> Administrative Code §3-703(a)

<sup>32</sup> Administrative Code §3-708(8)

<sup>33</sup> New York city charter §2601

Interest, the legislation creates uniformity under the law regarding the classification of a public servant.

"Fundraising activities" means the "solicitation or collection of contributions for a candidate for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council, or for the political committee of any such candidate by a lobbyist, or the solicitation or collection of contributions for any public servant who is a candidate for nomination for election, or election, to any elective office, or for the political committee of any such candidate by a lobbyist." The definition further sets forth that "[f]or purposes of this subchapter, the term 'contribution' shall have the meaning set forth in subdivision eight of section 3-702 of the administrative code, and the term 'political committee' shall have the meaning set forth in subdivision eleven of such section." Additionally, if the lobbyist is an organization, then "lobbyist" means the particular "division of the organization that engages in any lobbying activities or whose employment relates to the lobbying activities of the organization."

"Political consulting activities" is defined as "the activities of a lobbyist who for compensation (i) participates in the campaign of any candidate for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council by providing political advice, or (ii) participates in the campaign of any public servant who is a candidate for nomination for election, or election, to any elective office by providing political advice, or (iii) provides political advice to the mayor, public advocate, comptroller, borough president or member of the city council."

Section two of the bill amends section 3-212 of the administrative code, as amended by local law number 67 for the year 1993, by increasing the duties and powers of the city clerk as



defined in subdivision (a) to include conducting “any investigation and audits necessary to carry out the provisions of this subchapter.”

Int. No. 190 adds subdivision (b) to section 3-212 of the administrative code, which sets forth that the city clerk “[i]n addition to any audits required to enforce the provisions of this subchapter, the city clerk shall conduct random audits of the statements and reports required to be filed by lobbyists and clients pursuant to this subchapter.” Subdivision (b) also requires that the city clerk shall “select statements and reports for random audit in a manner pursuant to which the identity of any particular lobbyist or client whose statements or reports are selected for audit is unknown to the city clerk.” The city clerk in conducting the required random audits “shall require the production of such witnesses and records as may have been relevant to the preparation of the statements or reports audited.”

Subdivision (c) requires the city clerk to prepare and post annual reports relating to the administration and enforcement of the provisions of this subchapter on the internet. The required report must contain information regarding:

(i) the number of complaints received from the public and the disposition of such complaints; (ii) the number and amount of civil penalties imposed pursuant to subdivisions (a), (b), (c) and (d) of section 3-223 of this subchapter; (iii) the number and duration of orders issued pursuant to subdivision (a) of section 3-223 of this subchapter; (iv) the number of random audits conducted by the clerk and outcomes thereof; (v) compliance programs developed and implemented for lobbyists and clients; and (vi) such other information and analysis as the city clerk deems appropriate.

Finally, pursuant to subdivision (c), each year by March first, the city clerk must post the report containing information relating to the preceding calendar year on the internet.

Subdivision (d) requires the city clerk to “as soon as practicable after the issuance of an order pursuant to subdivision (a) of section 3-223 of this subchapter or imposition of a civil penalty pursuant to subdivision (a), (b), (c) or (d) of section 3-223 of this subchapter, post on the



internet information identifying the lobbyist or client who committed the violation that resulted in the issuance of such order or imposition of such penalty, the provision of law violated, the duration of such order or the amount of such penalty.”

Subdivision (e) places responsibility on the mayor and the city council to jointly appoint a commission twenty-four months after the effective date of the legislation “to review and evaluate the activities and performance of the city clerk in implementing the provisions of this subchapter.” The commission will be comprised of five members with the mayor and the city council jointly designating a chair from among the members of the commission. Within six months of the commission’s appointment, the commission must give a report to the mayor and city council “on its review and evaluation which report shall include any administrative and legislative recommendations on strengthening the administration and enforcement of this subchapter.”

Section three of Int. No. 190 amends subdivision (b) of section 3-213 of the administrative code, as added by local law number 14 for the year 1986, to require that all statements of registration must be kept available in electronic form in the office of the city clerk for inspection by the public.

Section four of the bill amends paragraph 5 of subdivision (c) of section 3-213 of the administrative code, as added by local law number 14 for the year 1986, to include “information sufficient to identify the local law or resolution, procurement, real property, rule, rate making proceeding, determination of a board or commission, or other matter on which the lobbyist is lobbying or expects to lobby” in the list of items that lobbyists must report in their statement of registration.

Section five of Int. No. 190 amends section 3-215 of the administrative code, as added by local law number 14 for the year 1986, to require that the lobbyist must still comply with the reporting requirements in section 3-216.1 of subchapter 2 of the administrative code, despite the termination of a lobbyist's retainer.

Section six of Int. No. 190 revises paragraph (3) of subdivision (b) of section 3-216 of the administrative code, as added by local law number 14 for the year 1986, to expand the periodic reporting requirements, with respect to the subject(s) lobbied, to include "information sufficient to identify the local law or resolution, procurement, real property, rule, rate making proceeding, determination of a board or commission, or other matter on which the lobbyist has lobbied."

Section seven of Int. No. 190 amends paragraph 2 of subdivision (d) of section 3-216 of the administrative code, as amended by local law number 67 for the year 1993, which outlines how the city clerk must store periodic reports. Under the bill, the city clerk would be required to keep periodic reports, in the city clerk's office, available for public inspection in electronic form.

Section eight of the bill adds a new section 3-216.1, titled "fundraising and political consulting reports," to subchapter 2 of chapter 2 of title 3 of the administrative code. Subdivision (a) of section 3-216.1 sets forth that "any lobbyist required to file a statement of registration pursuant to section 3-213 of this subchapter who in any calendar year to which the statement of registration relates, or in the six months preceding such calendar year, engages in fundraising or political consulting activities shall file with the city clerk, on forms supplied by the city clerk, a fundraising and/or political consulting report." Further, subdivision (a) sets forth that the report

shall be filed in accordance with the schedule applicable to the filing of periodic reports, provided that the first fundraising and/or political consulting report filed in any calendar year shall include information on fundraising and/or political consulting activities that occurred in any period beginning six months preceding the calendar year to which the statement of registration relates through the end of the reporting period for which the

report is filed, to the extent such information has not been reported in a fundraising and/or political consulting report filed in the preceding calendar year.

In addition, pursuant to subdivision (a), “[e]ach subsequent fundraising and/or political consulting report filed in or with respect to the calendar year to which the statement of registration relates shall include information on fundraising and/or political consulting activities that occurred since the end of the reporting period for which the previous report was filed through the end of the reporting period for which the current report is filed.” The fundraising and/or political consulting activities must be reported, “whether they are conducted directly by the lobbyist, or through any other entity of which such lobbyist is a principal.” Finally, under subdivision (a) the fundraising and/or political consulting reports must be filed no later “than fifteenth day next succeeding the end of such reporting period.”

Pursuant to subdivision (b) of section 3-216.1 the fundraising and/or political consulting report shall contain:

(1) the name, address and telephone number of the lobbyist and the individuals employed by the lobbyist engaged in such fundraising and/or political consulting activities; (2) the name, address and telephone number of the candidate, public servant, or elected official to whom or on whose behalf the lobbyist provided fundraising and/or political consulting services; (3) (i) the compensation paid or owed to the lobbyist for such fundraising and/or political consulting activities, and any expenses expended, received or incurred by the lobbyist for the purpose of providing fundraising and/or political consulting services; (ii) Expenses required to be reported pursuant to subparagraph (i) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where such expense is more than seventy-five dollars on behalf of any one person, the name of such person shall be listed; and (4) in the case of fundraising activities, the total dollar amount raised for each candidate for which such activities were performed.

Subdivision (c) of section 3-216.1 sets forth that all fundraising and/or political consulting reports “shall be subject to review by the city clerk.”

Subdivision (d) of section 3-216.1 requires the city clerk keep all fundraising and/or political consulting reports available in electronic form in the office of the city clerk for inspection by the public.

Section nine of Int. No. 190 amends subdivision (b) of section 3-217 of the administrative code, as amended by local law number 67 for the year 1993, to add the requirement that the annual report required to be filed under paragraph one of subdivision (a) must also include “all information required in fundraising and/or political consulting reports by section 3-216.1 of this subchapter.”

Section ten of the legislation amends paragraph 3 of subdivision (c) of section 3-217 of the administrative code, as added by local law number 14 for the year 1986, relating to annual reporting by lobbyists. Pursuant to the proposed changes, in the description of the subject(s) on which each lobbyist is retained, employed or designated by such client has been lobbied, the lobbyist must further include “information sufficient to identify the local law or resolution, procurement, real property, rule, rate making proceeding, determination of a board or commission, or other matter on which each lobbyist retained, employed or designated by such client has lobbied.”

Section eleven of Int. No. 190 amends paragraph 2 of subdivision (d) of section 3-217 of the administrative code, as amended by local law number 67 of the year 1993, to require that the city clerk keep all annual reports available in electronic form in the clerk’s office for public inspection.

Section twelve of the legislation amends section 3-221 of the administrative code, as amended by local law number 67 for the year 1993. The bill would require that any statements or reports that are required to be filed must be filed “by electronic transmission in a standard

form as required by the city clerk.” Further, section 3-221 sets forth that that “[s]tatements, reports, dockets and any other information required to be kept on file in the office of the city clerk for public inspection pursuant to this subchapter shall be kept in a computerized database and shall be posted on the internet as soon as practicable.”

Section thirteen of Int. No. 190 amends section 3-223 of the administrative code, as amended by local law number 67 for the year 1993, to increase the penalties for violations of subdivisions (a), (b), (c), or (d). The amendments to subdivisions (a) and (b) increase the penalty for violations to thirty thousand dollars, and the amendments to subdivisions (c) and (d) increase the penalty for violations to twenty thousand dollars.

Additionally, section thirteen of the bill amends subdivision (g) of section 3-221 of the administrative code to authorize the city clerk to report two types of violations to the department of investigation for further review. The first type of violation that the city clerk can refer to the department of investigation is when the city clerk deems it is a willful violation of subchapter 2. The second type of violation is when the city clerk “receives a report or otherwise suspects that a criminal violation of law, other than a violation of this subchapter, has been or may have been committed.”

Finally, section thirteen of Int. No. 190 adds subdivision (h) to Section 3-221 of the administrative code, to require the department of investigation to provide assistance to the city clerk for the “purpose of training personnel who are responsible for the administration and enforcement of the provisions of this subchapter.” Further, subdivision (h) sets forth that the “city clerk shall develop compliance programs for lobbyists and clients.”

The severability clause of the bill reads that if “any provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any

person or situation, such holding shall not affect, impair or invalidate the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.”

The effective date clause of the bill indicates that the “local law shall take effect on the ninetieth day after it shall have become a law provided that, upon enactment of this local law, the relevant city agencies shall take all necessary steps, including but not limited to the promulgation of forms and rules, to ensure the prompt implementation of this local law upon its effective date and provided further that section twelve of this local law shall take effect one year after it shall have become a law and provided further that any provisions of this local law that require the city clerk to post information on the internet or keep information in a computerized database or in electronic form shall take effect one year after it shall have become a law.”

#### **V. Provisions of Int. No. 191**

Int. No. 191 adds a new subchapter 3 to chapter 2 of title 3 of the administrative code, which among other things prohibits all gifts by lobbyists to public servants.

Accordingly, subchapter 3 begins in section 3-224 by defining two key terms, “lobbyist” and “public servant.” A “lobbyist” is defined as “a lobbyist as defined in subdivision (a) of section 3-211 of subchapter two of this chapter or any person engaged in lobbying or lobbying activities as defined in subdivision (c) of section 3-211 of subchapter two of this chapter.” Subdivision (c) of section 3-211 defines a lobbyist as “every person or organization retained, employed or designated by any client to engage in lobbying.”<sup>34</sup> The definition further sets forth that the term “lobbyist” does not include “any officer or employee of the city of New York, the

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<sup>34</sup> Administrative Code §3-211(a)

State of New York, any political subdivision of the State, or any public corporation, agency or commission, or the United States when discharging his or her official duties.”<sup>35</sup>

A “public servant” is defined as “a public servant as defined in subdivision nineteen of section two thousand six hundred one of the charter.”<sup>36</sup>

Section 3-225 prohibits lobbyists from offering or giving a gift to any public servant.

Section 3-226 outlines the provisions for enforcement of subchapter 3. Specifically, section 3-226 sets forth that complaints alleging violations of subchapter 3 “shall be made, received, investigated and adjudicated in a manner consistent with investigations and adjudications of conflicts of interest pursuant to chapters sixty-eight and thirty-four of the charter.”

Section 3-227 sets forth that “[a]ny person or organization who knowingly and willfully violates any provision of this subchapter shall be guilty of a class A misdemeanor.” Moreover, pursuant to section 3-227, “[i]n addition to such criminal penalties, said person or organization shall be subject to a civil penalty, in an amount not to exceed thirty thousand dollars.”

Section 3-228 authorizes the COIB to “adopt such rules as necessary to ensure the implementation of this subchapter, including rules defining prohibited gifts, and exceptions to the prohibition on offering and receiving gifts.” In addition, section 3-228 authorizes the COIB to promulgate such rules “to the extent practicable, in a manner consistent with rules and advisory opinions of such board governing receipt of valuable gifts by public servants.”

Section two of Int. No. 191 amends the city charter by adding a new section 2607, which sets forth that “[c]omplaints made pursuant to subchapter three of chapter two of title three of the administrative code shall be made, received, investigated and adjudicated in a manner consistent

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<sup>35</sup> Id.

<sup>36</sup> See supra footnote 33 and supporting text for definition.

with investigations and adjudications of conflicts of interest pursuant to this chapter and chapter thirty-four.”

The severability clause of the bill reads that if “any provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.”

The effective date clause of the bill indicates that the “local law shall take effect on the one hundred eightieth day after it shall have become a law provided that, upon enactment of this local law, the relevant city agencies shall take all necessary steps, including but not limited to the promulgation of forms and rules, to ensure the prompt implementation of this local law upon its effective date.”

#### **VI. Provisions of Int. No. 192**

Int. No. 192 amends the administrative code to strengthen the campaign finance system by prohibiting voluntary participants in the campaign finance program from receiving public matching funds for contributions by lobbyists.

Section one of the bill adds subdivision h to section 3-219 of the administrative code, which sets forth that lobbyists will also be obligated to “provide the statement identifying his or her status as a lobbyist to a participating candidate pursuant to subdivision one of section 3-720 of the administrative code.”

Section two of the bill adds paragraph (g) to subdivision 3 of section 3-702 of the administrative code, as amended by local law number 58 for the year 2004, to include



“contributions from a lobbyist or a person affiliated with a lobbyist” in the list of contributions that are not matchable.

Section two of Int. No. 192 also adds new subdivisions 16 and 17. Subdivision 16 defines the term “lobbyist” as a “lobbyist” as defined in section 3-211.<sup>37</sup> In addition, the section distinguishes that if a person is the “lobbyist” then the “person affiliated with a lobbyist” means “the spouse or domestic partner and unemancipated children of a lobbyist.” Further, if the “lobbyist” is an organization, then “lobbyist” means “only that division of the organization that engages in any lobbying activities or whose employment relates to the lobbying activities of the organization.” In the context of an organization as a “lobbyist”, the term “person affiliated with a lobbyist” means “any officer or employee of such lobbyist who engages in any lobbying activities or who is employed in an organization’s division that engages in lobbying activities of the organization and the spouse or domestic partner and unemancipated children of such officers or employees.”

Subdivision 17 defines “lobbying” or “lobbying activities” as those terms are “defined in section 3-211 of this title.” Section 3-211 defines “lobbying” or “lobbying activities” as:

(i) the passage or defeat of any local law or resolution by the city council, (ii) the approval or disapproval of any local law or resolution by the mayor, (iii) any determination made by an elected city official or an officer or employee of the city with respect to the procurement of goods, services or construction, including the preparation of contract specifications, or the solicitation, award or administration of a contract, or with respect to the solicitation, award or administration of a grant, loan, or agreement involving the disbursement of public monies, (iv) any determination made by the mayor, the city council, the city planning commission, a borough president, a borough board or a community board with respect to zoning or the use, development or improvement of real property subject to city regulation, (v) any determination made by an elected city official or an officer or employee of the city with respect to the terms of the acquisition or disposition by the city of any interest in real property, with respect to a license or permit for the use of real property of or by the city, or with respect to a franchise, concession or revocable consent, (vi) the adoption, amendment or rejection by an agency of any rule

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<sup>37</sup> See supra footnotes 34 & 35 and supporting text for definitions.

having the force and effect of law, (vii) the outcome of any rate making proceeding before an agency, or (viii) any determination of a board or commission.

Section three amends paragraph (a) of subdivision 6 of section 3-703 of the administrative code, as amended by local law number 58 and 59 for the year 2004, to include a requirement that each participating or limited participating candidate and his or her principal committee provide information regarding “whether such contributor, lender, guarantor, or provider of security reported they were a lobbyist or a person affiliated with a lobbyist during the calendar year in which the contribution or loan was made.”

Section four amends subdivision 8 of section 3-708 of the administrative code, as amended by local law number 60 for the year 2004, to add section 3-720 to the list of sections “the board shall require the filing of reports or contributions and expenditures...in accordance with the schedule specified by the state board of elections for the filing of campaign receipt and expenditure statements.”

Section five adds paragraph (d) to subdivision 2 of section 3-710 of the administrative code, which sets forth that “[n]otwithstanding any other provision of law, rule or regulation, a participant or his or her principal committee shall not be required to repay to the board any public matching funds that were paid to the participant or his or her principal committee by the board based on contributions from a lobbyist or person affiliated with a lobbyist.” In addition, paragraph (d) outlines that “[s]uch payment may only be deducted by the board from a subsequent payment, if any.”

Section six adds section 3-720 to chapter 7 of title 3 of the administrative code. Subdivision 1 of section 3-720 sets forth that “[e]ach participating candidate and his or her principal committee shall obtain from every contributor, lender, guarantor, or provider of security providing a contribution or loan, or guarantee or other security for such loan, a

statement, in a form prescribed by the campaign finance board, as to whether such contributor, lender, guarantor, or provider of security was a lobbyist or a person affiliated with a lobbyist during the calendar year in which such contribution or loan was made.” Further, the board maintains discretion to prescribe “such information be provided on the same form providing information as to the contributor’s residence and employment.” If a contributor fails to identify himself or herself as lobbyist or lobbyist’s affiliate, or if a candidate unintentionally submits a matching fund request for a contribution by a lobbyist or a lobbyist’s affiliate, it “shall not result in any civil penalty being assessed against a candidate or principal committee.” Subdivision 1 also sets forth that the “city clerk shall, at the board’s request, provide appropriate assistance to the board in determining whether a lobbyist or person affiliated with a lobbyist has complied with the requirements of this section.”

Subdivision two of section 3-720 outlines the board’s publication requirements. Specifically, the “board shall make available to the public, no less than quarterly and on at least a monthly basis during the five months preceding the general election for city offices and on at least a weekly basis during the month preceding the primary election for such offices and the month preceding the general election, information relating to lobbyists and persons affiliated with lobbyists that has been ascertained by the board pursuant to this section or subdivision six of section 3-703 of this chapter.” This subdivision further requires that this information must be organized “in a clear and understandable format and shall be as current as practicable.”

The severability clause of the bill reads that if “any provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the remainder of this local

law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.”

The effective date clause of the bill indicates that the “local law shall take effect on the ninetieth day after it shall have become a law and shall be applicable to all receipts, expenditures, and public funds claims for elections held after such effective date provided that, upon enactment of this local law, the relevant city agencies shall take all necessary steps, including but not limited to the promulgation of forms and rules, to ensure the prompt implementation of this local law upon its effective date.”

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2 CITY COUNCIL

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CITY OF NEW YORK

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COMMITTEE ON GOVERNMENTAL OPERATIONS

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April 4, 2006

Start: 1:06 p.m.

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Recess: 3:50 p.m.

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City Hall

Committee Room

13

New York, New York

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B E F O R E:

15

SIMCHA FELDER

16

Chairperson,

17

COUNCIL MEMBERS: Joseph Addabbo

18

Erik Dilan

Domenic Recchia

19

Larry Seabrook

Peter Vallone, Jr.

20

Inez Dickens

James Oddo

21

David Yassky

Speaker Quinn

22

23

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2 A P P E A R A N C E S

3

Anthony Crowell

4 Council to the Mayor of New York City

5 Frank Barry

Senior Policy and Communications Advisor

6 New York City Mayor's Office

7 Michael Davies

Executive Director

8 New York City Conflicts of Interest Board

9 Emmannuel Michalos

Director of Finance

10 New York City Clerk's Office

11 Nicole Gordon

Executive Director

12 New York City Campaign Finance Board

13 Dick Daley

Executive Director

14 Citizens Union

New York City, NY

15

Douglas Israel

16 Public Policy and Advocacy Director

Citizens Union

17 New York City, NY

18 Megan Quattlebaum

Associate Director

19 CommonCause

New York City, NY

20

Gene Russianoff

21 Senior Attorney

New York Public Interest Research Group

22 New York City, NY

23 Peter J. Kiernan

Chair, New York City Affairs Committee

24 New York City Bar Association

25

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2 A P P E A R A N C E S (CONTINUED)

3

Chad Marlow  
Executive Principal Advocate  
The Public Advocacy Group  
New York City, NY

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1 COMMITTEE ON GOVERNMENTAL OPERATIONS

2 CHAIRPERSON FELDER: Sorry for the  
3 delay. It's because we had to wait for the  
4 Administration. You will have to respond to those  
5 accusations in a few minutes.

6 Before anything, I'd like to  
7 introduce my colleagues. On my right, Council  
8 Member Inez Dickens. And Council Member Joseph  
9 Addabbo. I thank you both for being here on time,  
10 which is very rare. Not of both of you. But of the  
11 City Council, of itself. On my right, my immediate  
12 right, is the Counsel for the Government Operations  
13 Committee, DeNora Johnson, also known as the Boss.  
14 And if anybody here has any questions regarding the  
15 Committee, they should direct them directly to Ms.  
16 Johnson. And you can always call me, but if you  
17 want to know what's going on, you should speak to  
18 DeNora. And on my left, Mike Katzitanos (phonetic)  
19 -- got it right? -- Who is my legislative aide.  
20 Also here is Robert Newman, -- should I introduce  
21 you? Robert Newman, who is the Legislative Director  
22 for the City Council. I thank you all for coming  
23 here today.

24 I also would like to just mention an  
25 appreciation, and I don't do it often enough, the



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2 Sergeant- at- Arms, who are here with us, who will  
3 keep this place running smoothly and really deserve  
4 more appreciation than they get.

5 All right. Good afternoon, and  
6 welcome to this hearing. That's why you're the  
7 Boss. You see? I also want to introduce Council  
8 Member Peter Vallone, Jr., who just joined us.

9 The Committee will hear comments  
10 today on Intros. 190, 191, and 192, which make up  
11 the comprehensive lobbying reform plan proposed by  
12 the Speaker in conjunction with the Mayor. Briefly,  
13 the bills would, one, strengthen the mechanism for  
14 monitoring and enforcing compliance with the City's  
15 lobbying laws. Two, increase lobbyists reporting  
16 requirements under the law. And prohibit gifts by  
17 lobbyists to government officials. And finally,  
18 four, prohibit voluntary participants of the  
19 Campaign Finance Program from receiving public  
20 matching funds for contributions by lobbyists.

21 The Committee looks forward to  
22 hearing from witnesses and listening to their  
23 testimony about these bills. Ultimately, the  
24 Committee's goal is to receive a deeper  
25 understanding of the bills, and obtain constructive

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2 feedback about the substance of the bills, so that  
3 we can ensure that the legislation, which as finally  
4 passed, is as cohesive and comprehensive as  
5 possible.

6 As a member of the Council, I am  
7 proud to witness such a collaboration between the  
8 Speaker and the Mayor. For any of you who have been  
9 living in New York City for a while, you would  
10 understand how wonderful that statement is. It  
11 ticked me pink, if I can say that, when I was  
12 reading the bills, and it said in the bill, "I, the  
13 Speaker, Council Member Quinn, in conjunction with  
14 the Mayor...". That's something that we didn't see  
15 a lot of. So that's wonderful. And I applaud them  
16 both for their joint efforts, and I hope that this  
17 legislation will herald a new level of transparency  
18 and efficiency within City government.

19 Before we begin the formal testimony,  
20 I just wanted to just also introduce our Policy  
21 Analyst for the Government Operations Committee, who  
22 is on my right, behind Council Member Inez Dickens,  
23 Sheila Horgan.

24 And now, I just also want to mention,

25 if anybody in the audience intends to testify, they

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2 should see one of the Sergeant- at- Arms in the back  
3 and make sure you fill out one of the forms. The  
4 rule in this Committee, and I hope it is one that  
5 will spread in other Committees, is that unless you  
6 fill out a form, within 15 minutes of the beginning  
7 of the hearing, I will not hear your testimony.  
8 Unless there's some response to something else.  
9 Because I don't think it's fair for the people who  
10 are here, including myself, to have to listen to  
11 testimony of anybody that comes two hours late, and  
12 you know, sort of didn't want to wait on line. So I  
13 don't know whether you like that or not, but that's  
14 for another hearing we could have about that. But  
15 if you intend to testify today, or if you have any  
16 thought of testifying, you should fill out a form  
17 and then you can always say, no, I don't want to do  
18 it. But if in an hour, you decide you suddenly want  
19 to testify, we're not going to hear the testimony.

20 Having been as gracious as that, I'd  
21 like to ask the Administration to begin their  
22 testimony. Please identify yourself for the record.

23 MR. CROWELL: Good afternoon Chairman  
24 Felder, and members of the Committee. Thank you for

25 the opportunity to appear before you today. My name

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2 is Anthony Crowell and I'm Counselor to Mayor  
3 Michael R. Bloomberg. With me today is my  
4 colleague, Frank Barry, Senior Policy and  
5 Communication Advisor in the Mayor's Office. I will  
6 testify on Intros. 190 and 191, and Frank will  
7 testify on Intro. 192.

8 First, I want to begin by applauding  
9 the members of the Council for joining with the  
10 Bloomberg Administration to take up the important  
11 issue of lobbying reform, and issue that cuts to the  
12 heart of government integrity. In his State of the  
13 City speech, Mayor Bloomberg made lobbying reform  
14 and important priority for 2006. And he was pleased  
15 that Speaker Quinn and the Council responded so  
16 quickly, bringing additional ideas to the table that  
17 have strengthened this legislative package.

18 Lobbying activity in New York City  
19 has more than doubled over the last five years. And  
20 concerns have grown about the influence lobbyists  
21 wield. Indeed, is easy to understand why many  
22 citizens believe that lobbyists get preferential  
23 treatment, and certainly the recent scandals in

24 Washington D.C. have only reinforced public cynicism  
25 about government. To counter this trend, it is not

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2 enough for government officials to proclaim our  
3 personal integrity. We must work to strengthen the  
4 integrity of government itself, and raise the  
5 standards by which we are bound.

6 Over the past six weeks, the  
7 Bloomberg Administration and City Council have taken  
8 up that work. And now, with the help from the  
9 public and civic groups, we look forward to passing  
10 legislation that raises the bar for all of City  
11 government.

12 Let me begin by discussing Intro.  
13 190, which would achieve two important goals:  
14 Broadening disclosure, and establishing an effective  
15 enforcement apparatus. The latter being the key to  
16 the entire legislative package.

17 Intro. 190 would broaden disclosure  
18 by requiring lobbyists to report their activities  
19 with far more specificity. Currently, lobbyists are  
20 required to disclose the issues on which they are  
21 lobbying. And many lobbyists fully comply. But too  
22 often, some lobbyists ignore this requirement,  
23 providing only the most general description, or no

24 information at all. Under Intro. 190, lobbyists  
25 would be required to identify specific bills,

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2 resolutions, rules, regulations, or other matters on  
3 which they are lobbying.

4                   In addition, the bill would broaden  
5 disclosure in the area of political consulting and  
6 fund raising. Increasingly, over the last several  
7 years, lobbying organizations have branched into the  
8 world of political consulting, and vice versa. At  
9 the Conflicts of Interest Board's recent hearings on  
10 this growing industry, many civic groups raised a  
11 number of concerns about this trend, including that  
12 consultants might use their relationships with  
13 elected officials to lobby for special interests,  
14 and that consultants or fund raisers might offer  
15 elected officials reduced rates in order to expand  
16 their lobbying practices.

17                   While the imposition of restrictions  
18 on the relationships between lobbyists and their  
19 clients is an open question, it is clear that the  
20 public has a right to know more about how those  
21 relationships are structured. Intro. 190, by  
22 requiring that lobbyists who also serve as

23 consultants or fund raisers disclose these  
24 activities, will pull back the blinds and allow  
25 sunlight to shine on these relationships and their

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2 financial implications. To be clear, this will not  
3 impose any additional burdens on lobbyists. It will  
4 merely require them to disclose additional  
5 information in order to improve government  
6 transparency.

7                   For instance, if an elected official  
8 or other government employee hires a lobbyist  
9 consultant to conduct a poll, the campaign committee  
10 that pays for the poll must disclose that payment to  
11 the Campaign Finance Board. Under Intro. 190, the  
12 lobbyists too, would be required to disclose those  
13 total payments to the City Clerk. Similarly, if a  
14 government employee's campaign committee hires a  
15 lobbyist to raise campaign contributions, the  
16 campaign must disclose that payment to the Campaign  
17 Finance Board as it must disclose the name of any  
18 individual who serves as a fund raising agent or  
19 intermediary. Otherwise known as a bundler.

20                   Intro. 190 would merely require  
21 lobbyists what is required of candidates, public  
22 disclosure of these activities, in this case, to the

23 City Clerk. The value of this disclosure will be to  
24 significantly enhance access to this data by making  
25 it available in one central location. And making it

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2 far easier to draw connections between lobbyists'  
3 activities and the public policies they are  
4 attempting to influence. A citizen who searches the  
5 CFB's database, for instance, does not know which  
6 consultants and fund raisers also serve as  
7 lobbyists. Nor which public policies and officials  
8 those lobbyists are attempting to influence. Under  
9 Intro. 190, citizens can go to the Clerk's website  
10 and easily obtain all of this information.

11 Indeed, Intro. 190 will make all  
12 information far more easily accessible by requiring  
13 that all quarterly and annual reports be submitted  
14 electronically, and placed on the Internet in real  
15 time for the public, including law enforcement  
16 agencies and the press to see. It is important to  
17 note too, that the City Clerk's website will be  
18 overhauled, including the creation of a new domain  
19 name and home page, to make clear that lobbying  
20 regulation, and not just the issuance of marriage  
21 licenses, is one of the core functions and



22 responsibilities of the Clerk's Office.

23                   Now, let me turn to the critically  
24 enforcement provisions of Intro. 190. Never before  
25 has there been the political will to enforce the

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2 lobbying law. And never before has the Office of  
3 the City Clerk been given the resources and support  
4 structures to do it. As a result, the Clerk's  
5 Office has functioned as little more than a  
6 repository for lobbying records, not an enforcement  
7 agency. Mayor Bloomberg and Speaker Quinn have made  
8 clear that this is now going to change. To that  
9 end, let me address the suggestion that the new laws  
10 should be enforced by an agency other than the  
11 Office of the City Clerk, which is understandable,  
12 given the history of non- enforcement.

13                   The administration of the lobbying  
14 law, including provisions for its enforcement, which  
15 includes subpoena power, is placed by local law in  
16 the Office of the City Clerk, a unit of the City  
17 Council. As a result, the idea that the lobbying  
18 laws administration be moved out of the Clerk's  
19 Office, and thus, out of the Council, would be a  
20 curtailment of the Council's jurisdiction, which  
21 could only be achieved locally by voter referendum.

22 Instead of undertaking a lengthy referendum process  
23 for critical reforms that could be potentially  
24 defeated at the ballot box, the Mayor and Speaker  
25 committed to immediate reforms by ensuring that the

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2 Clerk's Office has a sufficient number of  
3 investigators to be trained by the Department of  
4 Investigation, to perform the lobbying laws audit  
5 and enforcement functions. The Clerk's Office is  
6 also required to take appropriate steps to educate  
7 those lobbyists about how to comply with the  
8 requirements of the lobbying law.

9                   The new investigative unit would not  
10 only have the authority and resources to review all  
11 lobbyist filing under the lobbying law, but the unit  
12 would also be required to conduct random audits of  
13 lobbyists' statements and reports each year. Any  
14 findings of criminal activity by the Clerk's Office  
15 would be required to be reported immediately to DOI.  
16 Likewise, reports of, or suspected criminal activity  
17 must also be reported to DOI immediately. At all  
18 times, DOI would be able to use its plenary  
19 oversight and investigative powers found in existing  
20 law to deal with issues of public corruption that

21 may arise in the context of the lobbying law. In  
22 addition, fines for lobbying law violations would be  
23 doubled, and there would be immediate penalties for  
24 lateness in filing quarterly or annual reports.

25 Citizens have a right to demand that

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2 any lobbying laws on the books are strictly  
3 enforced. Yet for too long, the enforcement  
4 apparatus within New York City's lobbying law has  
5 been collecting dust. Intro. 190 sends a clear  
6 message to lobbyists that it is not business as  
7 usual at the Clerk's Office.

8 The bill's enforcement mandate also  
9 places additional public reporting requirements on  
10 the City Clerk, who would be required to post  
11 information about orders and findings of a  
12 violation, or the imposition of a fine against a  
13 lobbyist on the Internet, along with any other  
14 pertinent information. Further, the Clerk would  
15 publish a report annually that contains information  
16 about the number of complaints received and their  
17 disposition, the number and duration of orders  
18 issued, the number and amount of civil penalties  
19 imposed, the number of random audits conducted, and  
20 their outcomes, and compliance programs developed

21 and implemented.

22 Finally, to ensure that the reforms  
23 are meeting their promise, and to create a process  
24 for strengthening them, the Mayor and Council will  
25 be required to jointly appoint a five- member

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2 Commission 24 months after the reforms are enacted,  
3 to review the success of their implementation. The  
4 Commission will make appropriate administrative and  
5 legislative recommendations on strengthening the  
6 enforcement of the lobbying law.

7 Now, I will turn to Intro. 191, which  
8 is built on the very basic idea that citizens have a  
9 right to expect that their elected officials are not  
10 being influenced by gifts from lobbyists. The bill  
11 would ban lobbyists from giving gifts to all public  
12 employees. From top to bottom. That means, if  
13 lobbyists take government employees to lunch, they  
14 must split the bill. If lobbyists offer them  
15 tickets to professional sporting events or  
16 performances, City workers must pay their own way.  
17 And if lobbyists provide them with gifts of value,  
18 City workers must provide full payment.

19 The bill directs the Conflicts of

20 Interest Board, also known as COIB, the agency  
21 currently charged with enforcing prohibitions on the  
22 receipt of gifts by public servants, to adopt rules  
23 defining prohibiting gifts by lobbyists, including  
24 exceptions. And to do so in a manner consistent  
25 with current guidelines followed by public servants.

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3                   When considering limited exceptions,  
4 we recommend that the COIB, for example, consider  
5 the extent to which it would be appropriate for  
6 government employees to participate in a widely  
7 attended event, hosted by an organization that may  
8 be a registered lobbyist, when the event is focused  
9 on important issues of public policy related to  
10 their official duties. Our goal is not to squelch  
11 communication between lobbyists and government  
12 employees. But to eliminate any unfair advantages,  
13 real or perceived, that lobbyists may gain by  
14 offering gifts to government employees.

15                   The procedure for reporting  
16 violations of the lobbyists gift ban would mirror  
17 those presently in place for reporting violations of  
18 the Conflicts of Interest Law. And finally, I note  
19 that we are mindful of the additional

20 responsibilities that these reforms would place on  
21 the Conflicts of Interest Board, and the  
22 Administration and Council staff have recognized the  
23 need to ensure that appropriate resources are  
24 available for these and other core agency functions  
25 of COIB to be carried out.

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2 Now, I would ask my colleague, Frank  
3 Barry to discuss Intro. 192.

4 MR. BARRY: Good afternoon Chairman  
5 Felder and members of the Committee. Thanks for  
6 having us here today. My name, again, is Frank  
7 Barry. And I am the Senior Policy and  
8 Communications Advisor in the Office of the Mayor.  
9 As you know, I formerly worked for several years at  
10 the City's Campaign Finance Board, and over the  
11 years, I've continued to study the performance of  
12 the City's matching funds program.

13 All reform programs are works in  
14 progress, whose long- term success relies on elected  
15 officials to make needed adjustments. The City  
16 Council has strengthened the Campaign Finance Act a  
17 number of times since its inception in 1988, and  
18 over the years, public funding formulas have grown

19 increasingly generous. As this has happened, the  
20 importance of adopting appropriate controls and  
21 safeguards to prevent waste and abuse has become  
22 ever more important.

23                   The primary purpose of the Campaign  
24 Finance Program, as you know, is to encourage  
25 grassroots fund raising and diminish the influence

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2 of special interests. In recent years, however, as  
3 lobbying activity has exploded in New York City, the  
4 Campaign Finance Program has become a boon to  
5 lobbyists. Providing \$1,000 in public matching  
6 funds for every \$250 contribution from a lobbyists,  
7 has the effect of rewarding lobbyists by magnifying  
8 the value of their contributions, which is directly  
9 opposite the program's purpose.

10                   Citizens have a right to expect that  
11 their tax dollars will not be used to match campaign  
12 contributions from lobbyists. In fact, it is likely  
13 that most New Yorkers would be unpleasantly  
14 surprised to learn that their tax dollars have been  
15 benefiting lobbyists for more than 15 years.

16                   Intro. 192 will eliminate a long-  
17 standing perversion of the Campaign Finance Act, by  
18 making ineligible for matching funds contributions

19 from registered lobbyists and person affiliated with  
20 lobbyists, including spouses, domestic partners, and  
21 any co workers who engage in lobbying activity, or  
22 who are employed in an organization's lobbying  
23 division. Mayor Bloomberg and Speaker Quinn have  
24 rightly recognized that meaningful enforcement of a  
25 ban on matching funds for lobbyists must include

20

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2 those persons affiliated with lobbyists.  
3                   There are two primary means by which  
4 the CFB will be able to determine whether an  
5 individual meets this definition of a lobbyists.  
6 First, the CFB will have access to the City Clerk's  
7 online database of lobbyists, from which it will be  
8 able to cross reference contributors. And  
9 Campaigns, too, I should note, will have access to  
10 this public data. And second, contributors will be  
11 required to disclose whether or not they are  
12 registered as lobbyists, or meet the definition  
13 outlined above of a person affiliated with a  
14 lobbyists.

15                   The legislation takes great care to  
16 make it as easy as possible for campaigns to collect  
17 and submit this information, by expressly



18 contemplating that campaigns will be able to obtain  
19 such information on the CFB's contribution card.  
20 Indeed, the CFB recommends that campaigns collect  
21 contribution cards for all contributions, and that  
22 campaigns include contribution cards in all fund  
23 raising mailings. Intro. 190 would simply require  
24 contributors to disclose, in addition to their home  
25 address and the address of their employer, whether

21

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2 or not they meet the definition of a lobbyists.  
3               We understand that complying with the  
4 Campaign Finance Act can be a burdensome process,  
5 and we agree the reporting requirements should be  
6 structured in the simplest manner possible. Under  
7 this bill, it will be no more difficult to collect  
8 lobbying information than it is to collect  
9 information about a contributor's employer. And by  
10 taking this one small extra step, we will ensure  
11 that taxpayer funds are not spent to subsidize and  
12 enhance campaign contributions from lobbyists and  
13 those affiliated with lobbyists. At the same time,  
14 the Campaign Finance Program will remain, by far,  
15 the most generous public financing program of any  
16 city or state in the nation.

17               In sum, Intros. 190, 191 and 192 take

18 important steps to strengthen public confidence in  
19 government, improve the transparency and integrity  
20 of the political process, put teeth into the  
21 lobbying law to ensure that it is enforced, and  
22 advance the Campaign Finance Program's mission of  
23 reducing the influence of special interests.

24                               We applaud the Council for taking up  
25 these important bills. We expect that the

22

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2 thoughtful consideration of the Campaign Finance  
3 Board, civic groups, and others during this public  
4 hearing process will further strengthen these bills,  
5 and we look forward to working with you to passing  
6 them into law, and seeing that they are successfully  
7 implemented.

8                               Thank you, and we would be pleased to  
9 answer any questions you may have.

10                              CHAIRPERSON FELDER: Thank you very  
11 much. We've been joined by Council Member Domenic  
12 Recchia, and Council Member Eric Dilan. Council  
13 Member Peter Vallone Jr. Councilman Addabbo please.

14                              COUNCIL MEMBER ADDABBO: Thank you Mr.  
15 Chair. And to the Administration, I thank you very  
16 much for being here today. It appears to be the

17 first step of a very important issue.

18 Mr. Crowell, on your statement, on  
19 your statement, third paragraph down, you said,  
20 "lobbying activity in New York City has doubled  
21 over the past five years". How is that measured?  
22 What measuring techniques did you use to measure how  
23 it's doubled over the past five years?

24 MR. CROWELL: It's measured by the  
25 lobbying activity that's reported to the City Clerk,

23

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2 in terms of the dollar amount spent on lobbying.  
3 Each year, as you know, the Clerk publishes and  
4 annual report, and I think the number of five years  
5 ago was something in the vicinity of \$14 million.  
6 And it's now in the vicinity of \$33 or \$34 million.

7 COUNCIL MEMBER ADDABBO: In that  
8 reporting done by lobbyists, correct?

9 MR. CROWELL: That's right.

10 COUNCIL MEMBER ADDABBO: Because you  
11 had mentioned, that some lobbyists ignore that  
12 reporting. Currently, obviously, tough to enforce.  
13 What are the penalties for not reporting?

14 MR. CROWELL: Well, there are  
15 penalties written into the law for non- reporting  
16 and non- compliance. But the reality is that the

17 Clerk has never imposed, to the best of our  
18 knowledge, any penalties for non-compliance. And  
19 so, really, the heart of this effort is to create  
20 and enforcement mechanism with not just penalties in  
21 the law, but penalties that will be imposed for non  
22 compliance.

23 COUNCIL MEMBER ADDABBO: And as you  
24 move into, like you said, the enforcement aspect of  
25 it, Intro. 190, 191, 192, a lot of emphasis is put

24

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2 on City Clerk's Office and Conflicts of Interests  
3 Board. Currently, they're -- I'm going to guess  
4 -- not sufficiently staffed to implement these  
5 three Intros. If not, what are we looking at as  
6 additional staffing levels and the cost of which may  
7 be incurred by the implementation of Intro. 190, 191  
8 and 192.

9 MR. CROWELL: Right. Well for the  
10 Clerk's Office, there are currently is not an  
11 investigative unit, so that would be required. And  
12 investigative unit would need to be staffed.

13 In terms of the number of  
14 investigators, we were going to be working with the  
15 Council staff to help determine that. Obviously, it

16 would be a handful of investigators, and working  
17 with DOI, who would be responsible for training  
18 them, just to make sure that the sufficient number  
19 given, the scope of what's being required. In  
20 addition, I would think that the Conflicts of  
21 Interest Board will need to have additional  
22 enforcement staff or enhanced, certain aspects of  
23 their enforcement staff now. And we'll be reviewing  
24 that as well, in the next month, to ensure that  
25 everything would be ready for the FY 2007 budget.

25

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2 COUNCIL MEMBER ADDABBO: Just so I  
3 know, we are currently unaware, it's to be  
4 determined, how much staffing levels, how much cost,  
5 at this point, correct?

6 MR. CROWELL: Right. In any event, I  
7 don't think the costs will be substantial, given  
8 what we are trying to achieve. So it would actually  
9 be relatively low costs for an enormous gain in the  
10 level of transparency that will be achieved with  
11 this program.

12 COUNCIL MEMBER ADDABBO: And if I may,  
13 again, the generalities of saying an enormous gain,  
14 do we have any specific number of goal that you're  
15 looking to save the taxpayers through the matching

16 funds, I suppose. But do you have a goal that  
17 you're looking to save in dollar amounts, when  
18 implementing these three Intros?

19 MR. CROWELL: No. There certainly  
20 wouldn't be that there's a goal to save. It would  
21 be, you know, the real savings is in -- really,  
22 you can't put a value on public integrity,  
23 therefore, I mean, public integrity is the ultimate  
24 gain, so obviously, we're not -- this is by no  
25 means a budget saving mechanism.

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2 COUNCIL MEMBER ADDABBO: Respectfully,  
3 again, when you said enormous gain, I thought you  
4 had something in mind.

5 MR. CROWELL: Oh no. Gain in terms of  
6 public integrity.

7 COUNCIL MEMBER ADDABBO: Okay.

8 MR. CROWELL: And that is the single  
9 focus of this bill.

10 COUNCIL MEMBER ADDABBO: Just  
11 checking. Thank you Mr. Chair. Thank you.

12 CHAIRPERSON FELDER: Do any colleagues  
13 have any other questions? Councilman Vallone.

14 COUNCIL MEMBER VALLONE: Thank you Mr.

15 Chair. I think most of my questions would be more  
16 appropriate for Conflicts of Interests or CFB. But,  
17 while drafting this legislation, it's very important  
18 that we establish what our intent is. We cannot  
19 leave this up to boards, or Clerk's Office to  
20 interpret our intent. Because we've seen the  
21 problems we've run into numerous occasions with CFB  
22 and other agencies, in trying to interpret what we  
23 said. Sometimes very clearly said, and sometimes  
24 left nebulous.

25 So therefore, when you state in your

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2 testimony that it's gifts of value. What do you --

3 I guess Council Members, or any other person who  
4 works for the City can't accept a gift of value from  
5 a lobbyist. What do you envision that to mean?

6 MR. CROWELL: Well, as you said, the  
7 Conflicts of Interest Board would be the entity most  
8 appropriate to answer the question, since the rule-  
9 making authority on those provisions is going to be  
10 given to them.

11 COUNCIL MEMBER VALLONE: That is what  
12 I did not want to happen. And I want to make sure  
13 that we have -- that our intent is clear here.  
14 Because I will not pass a bill that prevents me from

15 taking a tee shirt at a breakfast. And becoming a  
16 criminal if I do that, and losing my job. I will  
17 not do that. I need to make sure that it is in  
18 writing, and it is clear, what we intend, if we pass  
19 this kind of legislation. So I want to know what  
20 your opinion is on what it should be.

21 MR. CROWELL: Sure. And I'm going to  
22 address it head on. We wrote into the bill,  
23 provisions that would require the Conflicts of  
24 Interest Board to promulgate them both in a manner  
25 consistent to the way that they've promulgated rules

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2 and issued advisory opinions on receipt of gifts by  
3 public servants. What we're doing here is, -- the  
4 flip side of this is about what lobbyists can give  
5 to public servants, and what the Conflicts of  
6 Interest Board has in place now is, how public  
7 servants can receive gifts, or accept gifts. So,  
8 for instance, what one might envision is something  
9 like the State Lobbying Commission has put out is  
10 that events, for instance, are widely attended, like  
11 a legislative breakfast, and somebody gets a coffee  
12 or a bagel, I would imagine that that is probably  
13 something the Conflicts of Interest Board would look



14 at as something that would not necessarily be a  
15 prohibited receipt of something from a lobbyist  
16 organization.

17 And also, perhaps, there's something  
18 like a tee shirt, or a mug, or something that would  
19 be given as -- that's given widely, or widely  
20 distributed, that is of the minimalist value, that  
21 would be something that is not -- would not be  
22 regulated here. I think what we're really focusing  
23 on, instead of those widely attended events where  
24 there's a clear public purpose, and public policy  
25 issues are being discussed, is when there is

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2 intimate occasions, where a lobbyist and a Council  
3 Member, or a lobbyist and an Administration official  
4 go out for dinner, or have a one- on- one, or a two-  
5 on- one kind of exchange of ideas of information and  
6 there's a unique level of access that's being  
7 granted by the government official. That's really  
8 the heart of the aim here. So not to cut off  
9 legislative breakfasts, where actually, it's for the  
10 benefit of the City.

11 COUNCIL MEMBER VALLONE: I don't  
12 disagree with that, but again, I'm not going to  
13 leave that up to interpretation. Because too many of

14 us have been fined for technicalities, which were  
15 never intended to be enforced by the City Council  
16 when we passed legislation.

17                   For example, we have Lobbying Day  
18 here at City Hall, where many of us sit in our 250  
19 offices and every different group from New Yorkers  
20 for Parks, and you name it, will come through and  
21 lobby us. And perhaps drop off a pen, or a hat, or  
22 a poster, or something of that nature. And I'm not  
23 going to sit there and try to figure out what's the  
24 minimis, what's of value? Is this a public event?  
25 Or am I going to jail? It's just not something I

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2 need to do as a public official. So we need to make  
3 sure that this is delineated in the law that we  
4 pass.

5                   But I will ask questions down the  
6 line about this. So thank you.

7                   I also should disclose, I guess, that  
8 a relative of mine, some of you may know, is in the  
9 lobbying business now, so it might make birthdays  
10 around the house a little bit complicated. But I  
11 probably should say that on the record.

12                   CHAIRPERSON FELDER: That's how we fix

13 it in Borough Hall. I want to introduce Council  
14 Member Larry Seabrook, who has joined us. And  
15 Councilman Domenic Recchia. Did you have a  
16 question?

17 COUNCIL MEMBER RECCHIA: I have lots  
18 of questions. I could sit here for hours. I think  
19 the bill, the way it's written today, it needs a lot  
20 of clarification. It's way too broad. Right now,  
21 the way this bill is written, my colleagues and I  
22 are being set up for failure. We're being set up to  
23 get indicted. We're being set up to being sent up  
24 the river. I am telling you the truth. The way  
25 this bill is written, okay? I can't even be caught

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2 in the coffee shop with anybody. Have a cup of  
3 coffee. If someone sends flowers to my office --  
4 and let me tell you something. I represent a lot of  
5 senior citizens. They come in, they love me. They  
6 bring me flowers. I'm supposed to say, no, I can't  
7 take it anymore. It's way too broad. There's a lot  
8 of things in here that needs clarification.

9 I could just go on, but I could sit  
10 down and really go into this, because this is really  
11 being set up for my colleagues and I. And we have  
12 to really straighten out. Listen, I'm not against

13 reform. I'm not against, you know, changing things.  
14 Because I believe as time goes on, you have to  
15 change with the times. I'm not against that. But  
16 I'm just trying to say, is that we're not here to  
17 give Campaign Finance Board free reign to go after  
18 lobbyists either. And then they come after us.  
19 It's bad enough we have a problem with Campaign  
20 Finance Board.

21 But, I mean, it's just way too broad.

22 I really think that there has to be a lot of  
23 clarifications. And when I hear you say, well, we  
24 could leave it up to Conflicts of Interest Board,  
25 well they might mean this, or they might mean that

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2 this is the minimis. You know what? I've seen too  
3 many people get hurt by that. And I really think  
4 that a lot of things have to be clarified. And we  
5 need to go into this in greater detail.

6 I don't even know where to begin. I  
7 could just go through this bill and just show you  
8 things that have to be clarified. Go ahead.

9 MR. CROWELL: Let me try and break  
10 down some of what you're discussing, because I have  
11 to respectfully disagree. We've spent a lot of time

12 trying to craft this in a way that is manageable,  
13 and that can be easily understood.

14                   So let me explain two things. One  
15 thing there may be some confusion about is, you have  
16 Chapter 68 of the Charter now, which is the Conflict  
17 of Interest Law, which is what covers your activity  
18 now as a public servant, and contains specific  
19 prohibitions on acceptance of gifts. Right now, you  
20 can't accept any gifts with a value more than \$50.  
21 That's the rule that applies to a Council Member  
22 currently. However, -- I don't want to get to  
23 the idea of coffee and flowers. However the  
24 conflicts for -- and we'll have to look at that in  
25 light of the lobbying law, but what this does, is

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2 about the lobbyist. It puts an affirmative  
3 obligation on the lobbyist not to give gifts of  
4 value that are going to be defined by the Conflicts  
5 of Interest Board to you. So it's more about what a  
6 lobbyist can and can't do, in terms of giving  
7 things.

8                   In terms of a senior citizen who may  
9 want to give you flowers, we're really talking about  
10 registered lobbyists. So if the senior citizen is  
11 actually a registered lobbyist, and meets the

12 definition of a registered lobbyist, or a person who  
13 is required to register as a lobbyist, then they  
14 wouldn't be able to give. And that's their duty,  
15 not to give you.

16 Same thing as a cup of coffee. If  
17 somebody from the community buys you a cup of  
18 coffee, and they're not a registered lobbyist,  
19 that's a different issue, and your behavior would be  
20 governed by Chapter 68. But if it's a registered  
21 lobbyist who wants to take you out to the W Hotel  
22 for martinis, that's a different story. And that  
23 would have to be broken down.

24 So I think that there will be clear  
25 lines drawn. And I agree that there's going to have

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2 to be careful steps taken in drawing those lines.  
3 But we've accounted for that in the structures that  
4 are in the bill.

5 COUNCIL MEMBER RECCHIA: So what we're  
6 discussing, if I'm hearing you correctly, these  
7 bills pertain only to lobbyists. What lobbyists can  
8 and cannot do.

9 MR. CROWELL: Correct.

10 COUNCIL MEMBER RECCHIA: Okay. Then,

11 -- I understand that. But I still have some  
12 problems with this.

13 MR. CROWELL: Sure.

14 COUNCIL MEMBER RECCHIA: I mean, we  
15 could sit down and go over with you certain things.  
16 But I just want to read, in one part of this, in  
17 192, if you look on your testimony, page seven. On  
18 the first paragraph, one, two, three, four, the  
19 fifth line down. It says, "...lobbying activity or  
20 who are employed in organizations lobbying  
21 division...". Okay? That is just an example,  
22 okay? Or who are employed in an organization's  
23 lobbying division. That is so broad. What happens  
24 if a group, of people in a group of a not-for-  
25 profit. Or let's say, the Zoo. They send people

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2 down here to lobby for them. Okay? And then they  
3 go to a fund raiser for an elected official. Okay?  
4 Are they considered now a lobbying? Or you know, or  
5 employed in an organization's lobbying division. I  
6 mean, that's not what's clear. What's a lobbying  
7 division?

8 I mean, many organizations don't have  
9 lobbying divisions. They have people that work for  
10 them who are, you know, in government operations, or

11 government what ever you want to call it, but they  
12 come down here, yes. Do they do a form of lobbying?  
13 Do you want to call it that? Yes. Does that  
14 pertain to them?

15 MR. CROWELL: I think this provision  
16 is intended to capture the -- as you say, a lot of  
17 lobbyists wouldn't necessarily have a specific  
18 lobbying division. But there are plenty of  
19 lobbyists who do. And so, this provision is  
20 intended to capture those lobbying organizations  
21 that are probably not the Zoo. But who are  
22 professional lobbying organizations, or a wing of a  
23 large organization that has a professional lobbying  
24 operation, and would have people who may not be  
25 registered as lobbyist, but whose duties and

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2 employment do substantially relate to lobbying work.

3

4 COUNCIL MEMBER RECCHIA: I don't want  
5 to take up time here, but I have some other points  
6 that I think -- you could disagree -- that need  
7 clarification. Because there's some language that I  
8 would like to be stuck in there. Just to clarify  
9 things. And there's other parts and that, but I



10 don't want to take up -- one other part. Is that  
11 you want the Department of Investigation to look  
12 after, to see if the lobbyists are complying or not  
13 complying. Is that correct?

14 MR. CROWELL: No. What the bill  
15 contemplates is that there will be a separate unit  
16 of investigators in the Clerk's Office who are  
17 responsible, who have the primary responsibility of  
18 making sure that there are -- they're is  
19 compliance with filing of registration, filing of  
20 quarterly and annual reports by lobbyists. And  
21 making sure the information is complete and  
22 accurate. And those are investigators who will be  
23 staffed at the Clerk's Office. They will be  
24 initially trained by DOI. But they will not be  
25 supervised by DOI.

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2 COUNCIL MEMBER RECCHIA: They'll be  
3 supervised by the Clerk's Office.

4 MR. CROWELL: Correct.

5 COUNCIL MEMBER RECCHIA: All right.  
6 So the Clerk would be hiring them to their job. So  
7 we'd be increasing the --

8 MR. CROWELL: Head count at the  
9 Clerk's Office.

10 COUNCIL MEMBER RECCHIA: Right. The  
11 budget of the Clerk's Office. Okay.

12 I don't want to take up any more  
13 time. I could ask a lot more questions. But I  
14 would -- let me get everything together first, sit  
15 down with you and let me clarify it.

16 CHAIRPERSON FELDER: Council Member  
17 Dickens.

18 COUNCIL MEMBER DICKENS: Thank you so  
19 much Mr. Chairman. And thank you Attorney Crowell  
20 and Mr. Barry, for your testimony.

21 I want to go back just a second to  
22 the legislative breakfast that you referred to.  
23 That my colleague was talking about with the bagel.  
24 What if that included ham, eggs, and grits? You  
25 know, that extended it a little bit. But seriously,

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2 presently, and I'm referring directly to your  
3 testimony on page three, Mr. Crowell, presently, is  
4 it not a requirement that if accepting matching  
5 funds all disbursement, whether to a lobbyist or  
6 whomever, any disbursement must be disclosed. And  
7 therefore, open to public scrutiny? And if not,  
8 though, if not accepting matching funds, there is no

9 disclosure whatsoever? Am I correct in that?

10 MR. CROWELL: No. I think what you're  
11 saying is someone who is not accepting matching  
12 funds, are they still required to disclose their  
13 expenditures. And the answer to that is yes. In  
14 fact, under the law that the Council passed last  
15 year, or two years ago, all candidates are required  
16 to disclose their contributions and expenditures to  
17 Campaign Finance Board.

18 COUNCIL MEMBER DICKENS: Okay then the  
19 Intro. 190 really doesn't do anything to enhance  
20 that, on disclosure. Because you already have to  
21 disclose it in any case. Is that right?

22 MR. CROWELL: That's right. The  
23 candidates are disclosing it to the Campaign Finance  
24 Board. What 190 is doing is requiring the lobbyist  
25 to disclose that information to the City Clerk.

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2 COUNCIL MEMBER DICKENS: Because this  
3 says if an elected official hires a lobbyist that  
4 pays for the polls, then they must disclose --  
5 the "they", I thought this read -- maybe I didn't  
6 read it right -- that the elected official then  
7 must disclose the payment to CFB. That's not what  
8 this says? No?

9 MR. CROWELL: It is current law that  
10 any expenditure by a campaign committee is required  
11 to be disclosed to the CFB. And this would not  
12 effect that at all. It would only effect what a  
13 lobbyist is required to disclose to the City Clerk.

14 COUNCIL MEMBER DICKENS: Because I was  
15 just --

16 MR. CROWELL: I'm sorry of that's  
17 confusing, because it --

18 COUNCIL MEMBER DICKENS: Yes, it is.

19 MR. CROWELL: In other words, Council  
20 Members only report to CF -- a candidate, let's  
21 say a Council Member for the purposes of this  
22 discussion, would report to CFB. Lobbyists would  
23 report to the Clerk on things that are connected to  
24 those campaign contributions.

25 COUNCIL MEMBER DICKENS: All right.

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2 Now what about advocacy groups that are not  
3 lobbyists, registered as lobbyist, but they are  
4 lobbying on behalf of whatever it is? And  
5 frequently, maybe do a better job than some  
6 lobbyists. Now what -- they frequently come to  
7 our offices, and they bring cups and tee shirts, and

8 caps, and some other things. And they give them to  
9 everybody. Now, does that constitute a gift? Even  
10 though and advocacy group is not a registered  
11 lobbyist?

12 MR. CROWELL: No. It would be subject  
13 to the current law on the \$50 limit, but this  
14 legislation would not effect any gifts given by non-  
15 lobbyists. Such as not- for- profit organizations,  
16 things like that. That are not --

17 COUNCIL MEMBER DICKENS: So not- for-  
18 profits although they do lobby, are not in this?

19 MR. CROWELL: That's right, unless  
20 they are registered as lobbyist.

21 COUNCIL MEMBER DICKENS: All right.  
22 But I'm now talking about they're not registered.

23 MR. CROWELL: That's right. You're  
24 correct.

25 COUNCIL MEMBER DICKENS: All right.

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2 Okay, you've answered my question. Oh, one other  
3 thing I just had a question about. Approximately  
4 how much do you think that all of these three Intros  
5 on public matching funds for lobbyists gifts, how  
6 much would that save the taxpayers?

7 MR. CROWELL: On the reduction of the

8 public matching funds to contributions from  
9 lobbyists? For the last election, it would probably  
10 be in the vicinity of I would say several hundred  
11 thousand to a half a million dollars.

12 COUNCIL MEMBER DICKENS: Several  
13 hundred thousand?

14 MR. CROWELL: Right. Approximately  
15 half a million dollars.

16 COUNCIL MEMBER DICKENS: God, who was  
17 that that got a half a million? Thank you so much.

18 CHAIRPERSON FELDER: That's good. Two  
19 of them? Let's just shut it off. Thank you.

20 So I just want to continue on some of  
21 the questioning that was raised earlier. First of  
22 all, on the item -- well, we've been joined by the  
23 Speaker of the City Council.

24 SPEAKER QUINN: Were you just in the  
25 middle of a very pressing, threatening question,

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2 that I should let you finish?

3 CHAIRPERSON FELDER: Yes.

4 SPEAKER QUINN: Go ahead.

5 Well, I just wanted to stop by the  
6 Committee hearing for a couple of minutes. One, to

7 thank the Chair for moving so quickly on these  
8 items. Also to thank the Committee members for  
9 their consideration. And to thank the Mayor's  
10 Office for working with us on this package of  
11 lobbying reform. I think, as we know, the Mayor and  
12 I announced the five- pronged lobbying reform  
13 package a month or so ago. From the Council's  
14 perspective, there's two initial steps we're taking.

15 One, with this package of the three bills today.  
16 Second, we're also in the process of drafting pieces  
17 of legislation that will be referred to our Rules  
18 Committee for some internal operational changes in  
19 access to the Floor Act, as to different parts of  
20 the Council side of the bill to kind of restrict  
21 lobbying access, and some other matters. And we're  
22 hoping to be able to, with input from the Good  
23 Government Community and others, introduce those  
24 into the Council in the near future as well.

25 But I think, you know, sadly, you

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2 only have to open up the paper on any given day,  
3 including this morning, and see the problems that  
4 can be caused when there's inappropriate  
5 interactions between elected officials and  
6 lobbyists. You know, and we need to, in this

7 discussion and debate, be careful that we don't  
8 characterize all lobbyists with the same brush. You  
9 know, lobbying is a good profession, and an  
10 appropriate way for entities and organizations to  
11 get their opinions and voice heard in City  
12 government. But we need to make sure, one, that New  
13 Yorkers know that to speak to the Council or to the  
14 Mayor, you don't have to have a lobbyist. That you  
15 can come and speak to us directly. And that we make  
16 it very clear that we have the strongest possible  
17 set of rules and regulations around lobbying, so  
18 there will never be either the reality or even the  
19 perception that one, because of a lobbyist, they may  
20 have had hired had greater access or ability to  
21 influence government.

22 And you know, thankfully, in the City  
23 of New York, we don't have any scandals like the  
24 ones they're presently suffering in Washington.  
25 Which is exactly why, in the Council, myself and the

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2 Mayor wanted to do this plan early. Because we  
3 wanted to send a message that we are never going to  
4 let that happen in the City of New York, and that  
5 through this five- pronged plan, the little



6 blathering part should be omitted from any record  
7 that's being taken by the press, this five- prong  
8 plan, we are taking a very important initial step  
9 forward in making sure that we have that  
10 infrastructure and set of rules and regulations in  
11 place to make sure we never have such a scandal.

12 But more importantly, that New  
13 Yorkers know we're here to serve them. That they  
14 are our main priority, and that we're setting up  
15 government to serve people's interest, and hear the  
16 people's voice in the people's house, as opposed to  
17 lobbyists voice being the loudest ones that we hear.

18 I want to thank, in addition, the  
19 numerous Good Governments groups, Citizens Union,  
20 NYPIRG, and others who helped us with input on  
21 today's bills. And you know, this is a very  
22 important step forward, but hopefully, will not be  
23 the last. And that as we implement these  
24 initiatives, and continue in conversations on how to  
25 make New York City the leader in ethical government,

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2 that we my have other ideas from the Good Government  
3 community, or from elected officials about how we  
4 could even do more. That is certainly what we want  
5 to continue to do, because i think it would really

6 be great if someday, we heard in other parts of the  
7 country, that they said, "We're modeling our ethics  
8 and lobbying laws on what they did in New York  
9 City". And really be a leader on this.

10 So thank you again to the Chair, who  
11 is one heck of an ethical guy, and to the Mayor, for  
12 his work. And really, the Mayor's staff for all of  
13 their work on this with our staff, particularly Rob  
14 Newman and Jim Karas who did a tremendous amount of  
15 work on this.

16 I'll give it back to you.

17 CHAIRPERSON FELDER: Thank you. Thank  
18 you very much.

19 I don't like to argue in public about  
20 ethical things. You know, about your saying  
21 "ethical guy". I don't want the press to start  
22 badgering me now.

23 SPEAKER QUINN: For proof?

24 CHAIRPERSON FELDER: Yes. Anyway,  
25 getting back to some of the comments you made

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2 earlier, you sort of described the legislation as  
3 the flip side of what we are compelled to do as  
4 candidates. And if that's the case, I don't

5 understand why the \$50 gift rule would not be in  
6 place for the lobbyists as well. I don't understand  
7 why you're making it confusing. Now, let me just  
8 say, that any elected official that can be bought  
9 for \$50 is out of his mind. Fifty dollars. It's  
10 just not worth it. I can tell you that. Fifty  
11 dollars. You don't buy an elected official for \$50.  
12 And if somebody is trying to do it, they deserve to  
13 go to jail for that.

14 But I don't understand why you're not  
15 leaving the same rules that are in place for the  
16 elected officials for the gifts as for the  
17 lobbyists. It makes perfect sense to me that if the  
18 elected official is not allowed to take more than a  
19 \$50 gift from anyone, -- I mean, how many -- let  
20 me then ask you. How many \$50 gifts do you think  
21 the lobbyists are giving us?

22 MR. CROWELL: I think the answer is a  
23 legal one. What we had worked on as a policy matter  
24 was a gift ban, banning gifts by lobbyists to public  
25 servants, to public officials. What the Conflicts

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2 of Interest Law has in it right now, the \$50 rule is  
3 something that is promulgated by rule, authorized by  
4 the Charter, but promulgated by rule.

5                   To make any changes to that rule  
6 would require the Conflicts of Interest Board to  
7 promulgate a new rule. Either setting the value at  
8 zero, at five dollars, whatever it may be. But it is  
9 not something that you can do by legislation,  
10 because that provision of the Charter that  
11 authorizes those rules can only be amended by  
12 referendum. So it's a highly technical issue, but  
13 again, that's the reason why the legislation is  
14 structured the way it's structured, and the  
15 Conflicts of Interest Board has authority to look at  
16 the rule to make sure that things make sense before  
17 they are implemented. And so that's the short and  
18 the long --

19                   CHAIRPERSON FELDER: So let me make  
20 sure that I was listening carefully to what you  
21 said. If I understood you correctly, your response  
22 to me was that if you could, you would change the  
23 \$50 gift rule, even for the elected officials. But  
24 since it's so complicated, you can't change that.  
25 And if you can't change that, we'll leave that, but

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2 we'll change whatever we can. Is that true? Or not?

3                   MR. CROWELL: I'm not saying that as a

4 policy matter, we're looking to zero out that. What  
5 we're trying to do is -- I think whatever you're  
6 trying to do here is to strike the proper balance  
7 and try and deter improper influence on government  
8 officials, while not making something so unduly  
9 restrictive and unreasonable that government can't  
10 function.

11 So I think the Conflicts of Interest  
12 Board has to look at its authority, and look at the  
13 rule, and look at the rule in particular in relation  
14 to the lobbying law and the new gift ban  
15 prohibitions that are being proposed.

16 CHAIRPERSON FELDER: You're a very  
17 nice man. You know. But you didn't answer my  
18 question. I mean that seriously. Is that -- the  
19 reason I'm belaboring the issue is because of some  
20 of the questions that my colleagues raised. And  
21 we're not dying to get \$49.99 gifts. That's not  
22 what the purpose of the discussion is. I think the  
23 purpose of the discussion and the theme of what's  
24 going on here is that in your quest or in the quest  
25 of trying to retain as you said, integrity, above

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2 all, you're taking -- maybe -- I'm questioning  
3 this, because that's the purpose of the hearing, is

4 whether you're taking things out of control. And  
5 if, under the law now, and elected official is  
6 allowed to accept an under \$50 gift, it may make  
7 sense -- don't answer me, please, because I'll  
8 fight with you the rest of the afternoon -- it may  
9 make sense that the law should remain the same for  
10 the lobbyists. That they can, you know, as Council  
11 Member Dickens said, maybe for a breakfast that  
12 you're having with somebody, instead of just having  
13 cream cheese and a bagel and paying for it yourself,  
14 maybe they could stick, not ham, but lochs into the  
15 bagel. Okay? That will be another \$1.50 or  
16 something like that. Do you understand? That's the  
17 discussion. That's question number one.

18 Question number two I have for you  
19 is, the Clerk himself, is he subject to the same  
20 restrictions? No, I'm serious.

21 MR. CROWELL: The Clerk is subject to  
22 --

23 CHAIRPERSON FELDER: To the new law  
24 that we are going to be -- he's a public figure  
25 right?

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2 MR. CROWELL: Of course. The Clerk is

3 --

4 CHAIRPERSON FELDER: So who is going  
5 to be watching the Clerk? Who is going to be  
6 investigating the Clerk? Because you are going to  
7 allocate manpower to the Clerk's Office to make sure  
8 that elected officials are doing what they're  
9 supposed to do. I should say lobbyists. But it  
10 would not be right -- I'm sure Mr. Robles would  
11 say to you, that he cannot watch himself, right? He  
12 can't be his own auditor. So who is going to be  
13 watching the Clerk?

14 MR. CROWELL: That wouldn't change, in  
15 any event, in terms of who is watching the Clerk  
16 currently. And that would be the Department of  
17 Investigation. You also have your own rules and  
18 ethics procedures internal to the Council, so what  
19 is currently in place --

20 CHAIRPERSON FELDER: But when I'm  
21 talking about the lobbyists giving gifts --

22 MR. CROWELL: And I'm talking about  
23 that. In terms of the lobbyists giving the gifts to  
24 the Clerk, complaints would be made to DOI,  
25 complaints would be made to --

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2 CHAIRPERSON FELDER: They could not be

3 made to the Clerk, obviously.

4 MR. CROWELL: But really, on gift ban  
5 violations, complaints are supposed to be made to  
6 DOI or -- and as well, the Conflicts of Interest  
7 Board with DOI investigates, and then would  
8 administer and enforce the provisions of the gift  
9 ban. So the Clerk is really not involved in as much  
10 as the gift ban is concerned.

11 CHAIRPERSON FELDER: Good. That was  
12 just to distract you, that question. State  
13 jurisdiction. Does the State have any laws that are  
14 similar to the ones that you're proposing?

15 MR. CROWELL: The State currently has  
16 a lobbying law that sets -- that requires  
17 registration and filings as well. And also has a  
18 gift ban limit of \$75 in any one year.

19 CHAIRPERSON FELDER: For lobbyists.

20 MR. CROWELL: For lobbyists, yes.

21 CHAIRPERSON FELDER: So did you  
22 consider, when you did -- I know we want to be  
23 better than everybody else, but I assume that you  
24 reviewed the laws that the State has in place  
25 regarding lobbyists.



2 MR. CROWELL: I'm very thorough with  
3 my work, as are your attorneys in the Council.

4 CHAIRPERSON FELDER: Excellent. So I  
5 would just like, I would like to ask, as a courtesy,  
6 if you could provide to us, or if the staff, Robert,  
7 maybe if we can get to the members, a detailed grid  
8 as to the differences between the State lobbying  
9 laws and the proposals that you're making. And how  
10 that would change. You know, if there are  
11 any differences -- obviously, there are, you just  
12 said there are, because under State lobbying law,  
13 you said that they can give a \$75 gift.

14 MR. CROWELL: Our lobbying laws --

15 CHAIRPERSON FELDER: A year.

16 MR. CROWELL: -- Are consistent with  
17 the State provisions, except that we have a gift  
18 ban, whereas public servants can accept up to \$75.  
19 Or lobbyists can give up to \$75 in aggregate in a  
20 year.

21 CHAIRPERSON FELDER: Right.

22 MR. CROWELL: It's wholly consistent,  
23 it's just that we have a lower threshold in terms of  
24 what can be given.

25 CHAIRPERSON FELDER: So that's the

2 only difference.

3 MR. CROWELL: That's essentially the  
4 only difference.

5 CHAIRPERSON FELDER: Okay. So under  
6 the State law, you can take -- lobbyists can give  
7 a \$75 gift a year, which is the equivalent of about  
8 30 bagels, right? That's what it really is. I  
9 mean, you know, this sounds funny, but I think that  
10 the purpose of the State law, there's some sense to  
11 it. What they're saying is, don't get bogged down  
12 with stupidity. If somebody has a coffee, or  
13 something like that, even if they had 25 coffees a  
14 year, it's no big deal. But maybe otherwise it is.

15 MR. CROWELL: I believe our local law  
16 is probably -- it's perhaps in some ways stricter.  
17 I think it would be better to have a side- by- side  
18 analysis, rather than hashing out point by point  
19 here. But I think that you'll find that what we're  
20 trying to achieve here is monumental in terms of  
21 State and City regulations. But it is consistent in  
22 terms of the application of the State lobby and law  
23 to municipal officials.

24 MR. BARRY: If I could just jump in  
25 Councilman, I do want to emphasize too, that the

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2 intent, and we can work together to make this  
3 clearer, but the intent is not to prohibit a Council  
4 Member from attending a legislative breakfast and  
5 having that bagel. As these events are widely  
6 attended, and things that get into the principle of  
7 lively attended events, we are not attempting to  
8 diminish conversations between lobbyists and public  
9 officials. We are attempting to make sure that there  
10 is no undue influence brought to bear.

11 CHAIRPERSON FELDER: Let me make  
12 something clear, and I think I'll just echo some of  
13 what my colleagues have said. I think that none of  
14 us are stupid enough to come to a public hearing and  
15 say that we'd love to get all the money in the  
16 world. And we don't care about integrity or ethics.  
17 I think that that would be stupid. What did you  
18 say? True, but stupid. Okay. Stupid. But at the  
19 same time, some of discussion that's taking place is  
20 trying to come up with actually with ways to prevent  
21 lobbyists from having undue influence, but at the  
22 same time, come up with restrictions that make  
23 sense. That's what the discussion is all about.

24 I have a bunch of questions that  
25 Councilman Recchia has passed me. I'll just add one

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2 more question. But in all seriousness, I think many  
3 of us have -- are very much in favor of the theme  
4 of what we're trying to do. But I think we have  
5 some questions. I just would like to ask you one  
6 other question that seems sort of perplexing to me.  
7 Because under one of the new laws, you say that the  
8 matching funds would be limited to \$250. I'm sorry,  
9 that would be eliminated. The \$250 -- any  
10 matching money would be eliminated from lobbyists.  
11 Am I right?

12 MR. CROWELL: Right.

13 CHAIRPERSON FELDER: Let me revise  
14 that. That any contributions by lobbyists would not  
15 be matched with any campaign or public funds.  
16 Right? Campaign Finance funds.

17 MR. CROWELL: Correct.

18 CHAIRPERSON FELDER: So I could make  
19 the argument that you are encouraging lobbyists to  
20 contribute more money. Because in the old days,  
21 assuming I'm a lobbyists, right? And in the old  
22 days, I could go ahead and give you, you, you're the  
23 candidate, if I'm the lobbyist. I give you \$250, I  
24 did great. Right? I contribute \$1,000. That's a  
25 great deal. Now, you tell me that I can't get

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2 matched money. So you know what I have to do? I  
3 have to shell out a lot of money myself. Maybe  
4 \$2,000 or \$2,500 or \$2,750. And I'll bill it to my  
5 client, that's not the issue. But you are in  
6 essence, maybe, causing lobbyists to have more  
7 influence, because you are preventing them from  
8 gaining whatever little influence they gain by  
9 giving a smaller contribution.

10 MR. CROWELL: Well, I think the  
11 response is two part here. One is that lobbyists  
12 are already giving very large contributions. So for  
13 instance, a lobbyists who gives the maximum amount,  
14 gets a \$1,000 tacked on to that. So, the law is  
15 certainly preventing that from happening.

16 Two, a lobbyist who gives a small  
17 contribution and gets say, \$250, and an extra  
18 \$1,0000 gets kicked into that. The effect to the  
19 candidate is the same, in that it's a \$1,250 gift  
20 from the lobbyists, effectively. So the value to  
21 the candidate is a \$1,250 gift.

22 CHAIRPERSON FELDER: Okay. Did you  
23 ever run for public office?

24 MR. CROWELL: I have not, no.

25 CHAIRPERSON FELDER: All right, so let

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2 me teach you something. Somebody giving a candidate  
3 \$250 contribution, which is matched, is not the same  
4 as somebody shelling out \$1,000 bucks. It's not.  
5 You know, it's just not. So whatever influence you  
6 think it delivers, and again, I'm not --

7 MR. CROWELL: I agree with you. But  
8 that's because the \$1,000 would end up being a value  
9 of \$2,250. In other words, the candidate, I would  
10 imagine, you know, candidates need to raise money.  
11 They want to raise as much money as possible. So  
12 they will always look more favorably on larger  
13 contributions than smaller ones. That's said, you  
14 know, a \$1,000 from a lobbyist is still a \$1,000  
15 from a lobbyist.

16 CHAIRPERSON FELDER: You'll never run  
17 for public office. Because let me tell you  
18 something. I have a warped mind. But in this  
19 certain part of my brain is straight about what  
20 contributions mean. And if a lobbyist shells out of  
21 his pocket \$2,750, even if it's not matched at all,  
22 that means a lot more to me than a lobbyist giving  
23 me a \$250 contribution or three lobbyists that are  
24 matched. I don't participate in the program  
25 anymore. So for the media, don't write about Felder

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2 telling you how much money I'd like to get from  
3 lobbyists. Or what I'd rather get. But I would  
4 just again, recommend that this is something that  
5 you should look at, because it may not be really  
6 accomplishing what you're trying to accomplish. If  
7 the thrust of it is to save money for Campaign  
8 Finance I agree with you. But if the goal is to try  
9 to limit the amount of influence that lobbyists  
10 have, you may not be accomplishing that. That's  
11 all.

12 MR. CROWELL: Okay. I think the flip  
13 side to the argument is also the idea that I think  
14 the public would expect their tax dollars are not  
15 going to match a lot of these contributions. And I  
16 think that expectation is both a reasonable one, and  
17 one that we ought to address. Because I think it's  
18 -- fairly or unfairly, lobbyists have a certain  
19 public reputation, and I don't think it's one that  
20 people would like to know that they're shelling out  
21 hundreds of thousands of dollars to support.

22 CHAIRPERSON FELDER: I'm not debating  
23 that with you. I would just say that that would be  
24 the argument. That's the argument. In my mind. If  
25 the argument is to save the City money, taxpayers

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2 money, that's another story. But if the discussion  
3 which you had earlier sort of also discussed the  
4 fact that it would limit the influence, I don't  
5 believe that's true.

6 Councilman Dilan.

7 COUNCIL MEMBER DILAN: Thank you Mr.

8 Chair. I didn't intent to ask a question or speak,  
9 but I think you've touched on something that was a  
10 concern for me in this bill. And it is regarding a  
11 lobbyist's right as a citizen of this City, to give  
12 a personal contribution. And I want to hear your  
13 response to that. And in my opinion, just as a New  
14 Yorker, as an individual, if a lobbyist, or a person  
15 who is not allowed to make a matchable \$250  
16 contribution, you would then -- you would create  
17 a different playing field in the effect that say the  
18 average person in my district, when they give me a  
19 \$250 contribution, that is matchable. Their rights,  
20 as a New Yorker, -- the rights of New Yorkers  
21 should all be the same, in essence. So if a  
22 lobbyist gives me a personal \$250 check, he should  
23 have the same rights as anybody else within the City  
24 of New York.

25 And I just wanted to get your



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2 opinion, because just as a person, if they're not  
3 allowed to have the same rights as any other New  
4 Yorker, I think there we're making a mistake.

5 Now, in terms of the pack money and  
6 all the other items, naturally, that's not  
7 matchable. And I could see how some concerns could  
8 be raised there. But just in terms of balance in  
9 keeping all rights of New Yorkers at least on the  
10 same playing field, what are your thoughts in that  
11 regard?

12 MR. CROWELL: Well, I think that first  
13 off, we're not stopping anyone from making a  
14 campaign contribution. So I think out of the gate,  
15 we have a level playing field. That anyone who  
16 wants to express themselves through a contribution  
17 to a candidate can do so automatically. And for a  
18 dollar amount that they, you know, that they choose.

19 However, in as much as the matchability of  
20 someone's contribution, that is not a right that  
21 belongs to a citizen. It is a benefit of a  
22 participation in a voluntary campaign finance  
23 program. And so, we must not --

24 COUNCIL MEMBER DILAN: It's not the  
25 right of a citizen, under the law, the Campaign

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2 Finance Law, that it's not their right to I guess  
3 basically weigh in, in a campaign, and either way  
4 that they wanted to, you think it's not their right  
5 to contribute their money in compliance with the  
6 program that the City created? That's not their  
7 right to fund and give this money to people?

8 MR. CROWELL: The citizen is not --  
9 the citizen, to the extent that they want to support  
10 a candidate who is otherwise not self funded, has no  
11 -- there's no right that obtains to a citizen,  
12 just because the candidate that they are  
13 contributing to is a voluntary participant in the  
14 City's Finance Program. The Campaign Finance  
15 Program is something that is about the candidate.  
16 It's about public integrity. And that's the goal,  
17 to ensure that there is an opportunity for  
18 candidates to run a race and to have matchability of  
19 campaign funds so they can run that race.

20 But there's no inherent right in any  
21 individual citizen that their campaign contribution  
22 be matched. Quite honestly, there are many  
23 candidates who receive campaign contributions who  
24 don't participate in the Campaign Finance Program at  
25 all. And so, they're not going to be matched.

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2 But the idea is that in terms of a  
3 level playing field, we are in no way impairing any  
4 individual from giving to a campaign. And that's  
5 the threshold test. Whether or not the candidates  
6 that they're giving to is in the Campaign Finance  
7 Program or not is not material to the rights that  
8 those citizens have to express themselves through a  
9 campaign contribution.

10 COUNCIL MEMBER DILAN: I think there's  
11 a little bit of unfairness there, but the reason why  
12 I'm not worried about it that much is because  
13 lobbyists in general don't give too many personal  
14 checks. So it's not much of an issue.

15 But I just think just from a basic  
16 fairness standpoint, I think that all New Yorkers  
17 should have the same rights, no matter what it is,  
18 and I think, under this circumstance, you may be  
19 putting someone who is a lobbyists and a New York  
20 City resident, you may be putting them in a  
21 situation where their \$250 contribution isn't  
22 treated the same as any other New Yorker's \$250  
23 contribution. So I just wanted you guys to take a  
24 look at that, and take that under consideration.  
25 Thank you Mr. Chair.

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2 CHAIRPERSON FELDER: Thank you.

3 Council Member Recchia. I just want to remind my  
4 colleagues that we have the Conflicts of Interest  
5 Board here, as well as Campaign Finance Board. And  
6 a lot of other people. Good Government groups, who  
7 we'd like to ask questions as well

8 COUNCIL MEMBER RECCHIA: One quick  
9 question.

10 CHAIRPERSON FELDER: Okay.

11 COUNCIL MEMBER RECCHIA: On the filing  
12 that the lobbyists do, is it the form that they have  
13 to file with the City, is that the same form they  
14 file with the State?

15 MR. CROWELL: The idea will be that  
16 the forms will be as "synced up" so to speak, as  
17 possible. But there will be additional reporting  
18 requirements on the City forms that are not required  
19 on the State forms. For instance, the bill provides  
20 for disclosure of fund raising and consulting  
21 activities. That is not required by the State. So  
22 to the extent possible, the forms will be as close  
23 to the State forms as possible, but there will need  
24 to be additional pieces of paper, or computer

25 screens for additional information.

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2 COUNCIL MEMBER RECCHIA: Okay. So  
3 basically, it's going to be basically the same form  
4 with just maybe one, two, three, or four more pages  
5 that we're going to be adding on for additional  
6 information that we want.

7 MR. CROWELL: Correct.

8 COUNCIL MEMBER RECCHIA: Okay.

9 CHAIRPERSON FELDER: Council Member  
10 Seabrook, please.

11 COUNCIL MEMBER SEABROOK: Thank you  
12 Mr. Chairman. Just a couple of questions as it  
13 relates to the investigative arm. How does a  
14 complaint become a part of the Clerk's Office and  
15 goes for an investigation? Is this by audit only?  
16 Or any John Q. Citizen can say, "I saw a Councilman  
17 and a lobbyist eating lunch". Now, who paid half, or  
18 did they pay half? Or how is that done? What  
19 triggers off the investigation? How --

20 MR. CROWELL: Well, I think that is a  
21 complaint that would be made to the Department of  
22 Investigation. Conflicts of Interest Board would  
23 have jurisdiction over the enforcement of that. But  
24 they would have to review it to see if there's any

25 merit to it. And the nature of the complaint.

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2 I would say, with any other  
3 complaint, where there's an issue of public  
4 integrity at stake. So in that respect, it doesn't  
5 change.

6 COUNCIL MEMBER SEABROOK: No, but I'm  
7 saying, John Q. Citizen see you sitting in the  
8 restaurant says, well, I'm going to file a  
9 complaint, because I saw them sitting there, and  
10 obviously, they had a meal, and I want to find out,  
11 did he pay half. So these complaints, once they are  
12 there, it triggers off an investigation, I would  
13 assume.

14 MR. CROWELL: Well, I would think it  
15 would depend on the nature of the allegations in the  
16 complaints as to whether the enforcement body that  
17 it was reported to would actually do an  
18 investigation, or how they would handle it. And I  
19 think that they're going to have to contemplate how  
20 they would do it. I think you could ask the  
21 Conflicts of Interest Board right now how they do it  
22 in the context of seeing a public servant and  
23 somebody else, and they thought perhaps that someone

24 else took a public servant out for lunch, How would  
25 they decide whether or not the \$50 rule was violated

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2 or not. And the process won't be any different,  
3 from my understanding. But I certainly don't want  
4 to speak for the Department of Investigation or the  
5 Conflicts of Interest Board.

6 COUNCIL MEMBER SEABROOK: No, but I'm  
7 just saying, that here's an issue about a cup of  
8 coffee, about flowers, et cetera. And so these  
9 complaints, and they could be complaints but never  
10 confirmed, and it stays as part of a record that an  
11 investigation has taken place and a part of an audit  
12 and a report that's going to be issued to say well,  
13 this person was investigated, it's -- go ahead.

14 MR. CROWELL: Well, I think, here  
15 you're talking about the gift ban prohibition, which  
16 is something that is not going to be administered or  
17 enforced by the Clerk. The Clerk's investigators  
18 are going to do investigations and audits of what's  
19 filed and the scope of what has been filed.

20 COUNCIL MEMBER SEABROOK: Okay.

21 MR. CROWELL: That's one thing. But  
22 the standard process for investigating conflicts of  
23 interest is what's going to take place right now in

24 terms of the gift ban. So there's no new process  
25 that will likely be, you know, designed, with the

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2 exception of the fact that DOI and COIB are going to  
3 have a new responsibility. And will have to decide,  
4 you know, the way they're way they're going to do  
5 it. But I think it's going to be the same process,  
6 in general. So I think it's best to ask COIB and  
7 DOI if they anticipate that there's going to be any  
8 change in the process by which they're going to  
9 review a complaint. And my guess is probably, there  
10 wouldn't be any significant change.

11 COUNCIL MEMBER SEABROOK: Thank you  
12 Mr. Chair.

13 CHAIRPERSON FELDER: Thank you very  
14 much. I just want to -- before we say good bye  
15 -- I mean, you could stay here the rest of the  
16 afternoon, and you may -- is that I want to  
17 clarify, again, that the questioning I believe, by  
18 my colleagues and myself, is focused on trying to  
19 make sense and trying to make this work. Because  
20 really most of the restrictions that you're talking  
21 about are on the lobbyist, I should say all of them  
22 are on the lobbyist rather than the candidates or



23 elected officials. But we still, believe it or not,  
24 want to try to make sure that this works, you know,  
25 works well. So that's the questioning. And I thank

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2 you both for coming.

3 Do you have anything else you want to  
4 say before you leave?

5 MR. CROWELL: No. Thank you.

6 CHAIRPERSON FELDER: Okay. You're  
7 welcome.

8 The next panel will be Wayne -- is  
9 it Harley? From New York City Conflicts of Interest  
10 Board. And Mark Davies, from the New York City  
11 Conflicts of Interest Board.

12 Are they distributing your testimony?

13 MR. DAVIES: They're distributing a  
14 summary of my testimony, yes.

15 CHAIRPERSON FELDER: How many pages is  
16 it?

17 MR. DAVIES: They're distributing one  
18 page.

19 CHAIRPERSON FELDER: Excellent. You  
20 may begin.

21 MR. DAVIES: My testimony will be  
22 about four minutes.

23 CHAIRPERSON FELDER: I don't mind, I'm  
24 just suggesting that the way I prefer running my  
25 Committee hearings is that instead of spending a lot

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2 of time repeating what was said, if you can  
3 highlight and emphasize those areas that you differ.  
4 Because if you agree with everything that was said,  
5 you could say, you know, I agree with everything  
6 that was said except. But I'm not interested in  
7 hearing -- and I'm sure you're not interested in  
8 hearing yourself repeat what was said.

9 MR. DAVIES: No, I don't have anything  
10 that would be repetitious, I don't believe.

11 CHAIRPERSON FELDER: Thank you very  
12 much. You may go ahead.

13 MR. DAVIES: So Mr. Chair, members of  
14 the Council, my name is Mark Davies. I'm the  
15 Executive Director of the New York City Conflicts of  
16 Interest Board. And I have with me, Wayne Hawley,  
17 or General Counsel and Deputy Executive Director.  
18 As well as behind me, Felicia Minnon (phonetic) who  
19 is our Director of Financial Disclosure.

20 I've been asked to testify on this  
21 lobbying package, consisting of Intro. 190, 191, and

22 192. I will not address Intro. 190, the City Clerk  
23 piece, nor 192, the Campaign Finance Board piece.  
24 But will limit my remarks to Intro. 191, which is  
25 the COIB piece, involving gifts by lobbyists.

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2                   The Conflicts Board believes that  
3 Intro. 191 is a clear step in the right direction,  
4 and applauds the Speaker and the Mayor for  
5 introducing this, and also for consulting with us  
6 during the drafting process. The Board, thus, has  
7 no objection to the enactment of Intro. 191,  
8 provided that certain clarifications are made.  
9 Either my amendment or by legislative history, and  
10 further provided that certain concerns of the Board  
11 are addressed. I will first discuss the  
12 clarifications and then the concerns.

13                   The clarifications, and these are  
14 summarized there on that page, are first of all, the  
15 definition of lobbyist. We understand that the  
16 definition of a lobbyist is broader -- that the  
17 definition in 3- 224(a) is broader than the  
18 definition of a lobbyist in 3- 211(a). Because it  
19 would include not only persons or organizations  
20 acting on behalf of the client, but also the clients  
21 themselves, when they engage in lobbying activities

22 on their own behalf.

23                   This means that the Board may impose  
24 fines up to \$30,000 per violation on persons who  
25 give gifts in violation of the law, even if the

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2 person is not required to register as a lobbyist,  
3 provided they fulfill the definition of lobbyist in  
4 the definition section.

5                   Note, however, that Section 224(a) does  
6 require one change. The words "or organization"  
7 must be added after any person. Otherwise, one  
8 might argue that the only clients included within  
9 the definition are individuals, and not  
10 organizations. And that is because the distinction  
11 is made in the law because persons and  
12 organizations.

13                   Secondly, Section 3- 226,  
14 Enforcement, and 3- 227, Penalties. Under Chapter  
15 68, the Board may begin an enforcement proceeding on  
16 its own initiative and need not wait for a  
17 complaint. We understand that the cross- reference  
18 to Chapter 68 in the law would include this same  
19 authority. We further understand that the  
20 enforcement provisions in Intro. 191 authorize the

21 Board to impose a maximum fine of \$30,000 on the  
22 gift giver, although under Chapter 68, the Board may  
23 impose a maximum fine of only \$10,000 on the public  
24 servant gift receiver.

25 Thirdly, Legal Advice and Training

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2 Education. Although the bill does not specifically  
3 mention the COIB providing legal advice or training  
4 and education to those persons subject to this law,  
5 we understand that the COIB is fully authorized and  
6 obligated to provide such advice and training.  
7 Otherwise, those persons subject to the law would be  
8 compelled to act at their peril.

9 We further understand that the COIB,  
10 in interpreting this law, including the definition  
11 of lobbyists in Intro. 191, will not, in any way, be  
12 bound by interpretations promulgated either by the  
13 City Clerk or by the CFB. Although the Board will,  
14 of course, seek to adopt consistent interpretations  
15 if the Board concludes that the interpretations by  
16 the City Clerk or the CFB is incorrect, the Board is  
17 fully free, under this legislation, to adopt its own  
18 interpretation.

19 Fourth, Intro. 191 contains no  
20 confidentiality provisions. We understand, however,

21 that the records of the Board relating to lobbyists  
22 will be fully protected by the confidentiality  
23 provisions in Chapter 68, Charter Section 2603(k). And  
24 then second, we have two concerns. Although Intro.  
25 191 grants new enforcement powers to the Board by

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2 incorporating Chapter 68 in regard to enforcement,  
3 it would require the DOI, a Mayoral agency,  
4 investigate violations of the gift ban involving  
5 non- mayoral elected officials, even in the midst of  
6 an election campaign, when allegations of such  
7 violations are most likely to arise.

8 I would simply like to note this, in  
9 this regard. Among the 50 largest cities in the  
10 United States, New York City is the only city that  
11 has given its Ethics Board enforcement power, but  
12 not the power to investigate violations of the law.  
13 And that is true even in those cities that have an  
14 addition to an Ethics Board, also a separate  
15 Inspector General, or auditor, or Department of  
16 Investigation.

17 The Board's continuing concern over  
18 its lack of investigative authority is thus  
19 exacerbated by Intro. 191. We are not requesting

20 that the bill be amended at this time to address  
21 this concern. We understand that it would require a  
22 referendum. But we do wish to note, for the record,  
23 our continuing concern in this regard.

24 And then finally, our second concern.

25 Gifts are perhaps the most difficult subtle, and

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2 complex issue faced by ethics boards. If enacted,  
3 this proposed law will impose substantial additional  
4 work on the Board. At a time when, because of past  
5 budget cuts, staff cuts, and an overwhelming  
6 increase in its work load, the Board staff is barely  
7 keeping afloat in fulfilling its mandate under  
8 Chapter 68, to educate, advise, and enforce  
9 regarding the existing provisions of Chapter 68.  
10 For example, in enforcement, the number of  
11 complaints since 2001, has tripled with no increase  
12 in enforcement staff. The number of telephone  
13 requests for advice, which provide the first line of  
14 defense against conflicts of interests, but which  
15 requires substantial attorney time, has increased 77  
16 percent, since 2001, with no increase in legal  
17 advice staff.

18 For these reasons, it is absolutely  
19 necessary that the enactment of the bill be

20 accompanied by significant additional resources for  
21 the Board. Otherwise the imposition of these new  
22 responsibilities upon the Board and its staff by  
23 enactment of Intro. 191 appears very problematical.

24 And then finally, if I could just  
25 address two issues that were raised in the hearing

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2 before. First of all, there may be a little  
3 confusion here. Because Intro. 191, as I read it,  
4 has no impact whatsoever on the gifts that you, as  
5 Council Members can receive. None. You are, and  
6 remain, subject only to Chapter 68, and the gift ban  
7 in 2604 (b)5. And pursuant to that, we have adopted  
8 our gift rule. The gift rule works very well, I  
9 believe. It is complicated, unfortunately. It  
10 almost has to be, but it works well. You've been  
11 subject to it for years. I certainly do not  
12 contemplate any change in that rule. However, we  
13 have to be, I believe, consistent with lobbyists and  
14 public servants. We can't say that a lobbyist can  
15 give a \$75 gift, but you can only receive \$50.  
16 That's just -- we're setting you up for  
17 violations.

18 Therefore, if it is the intent of the



19 Council that you wish to have a gift rule for  
20 lobbyist that is less than \$%0, you have to specify  
21 that in recent legislative history. Because we have  
22 to know if you want us to lower the \$50 limit.

23 And then secondly, was the issue  
24 about -- I believe that Council Member Seabrook  
25 raised, that what about if someone sees a lobbyist

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2 and Council Member in a restaurant, eating lunch  
3 together, and they file a complaint. Let me just  
4 address that for a moment, the way it works. First  
5 of all, we received last year, 2005, 370 complaints.  
6 We referred, of those, 110 to the Department of  
7 Investigation. So less than a third of the  
8 complaints we receive actually go anywhere at all.  
9 The case you've mentioned, if that's the only thing  
10 that happened, there would be no referral, which  
11 simply, there's no reason to refer it. There's no  
12 credible basis for a violation. If, on the other  
13 hand, this is in the Four Seasons, and the person  
14 that comes forward says, "You know, I saw a Council  
15 Member eating dinner with a lobbyist, and the only  
16 person that handed over a credit card was the  
17 lobbyist", that goes to investigation. Because  
18 there you've got a credible basis for a complaint.

19 I have no further testimony.  
20 Obviously, any questions that either I, or Mr.  
21 Hawley, or Ms. Minnon can answer, we'd be happy to  
22 do so.  
23 CHAIRPERSON FELDER: Thank you very  
24 much.  
25 Council Member Addabbo.

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2 COUNCIL MEMBER ADDABBO: Thank you Mr.  
3 Chair. I appreciate your calling for the need for  
4 additional clarification and specificity with  
5 regards to language. I think that's something that  
6 we all ask for at this panel, so thank you very  
7 much.  
8 Along the lines of the question I had  
9 with the prior panel, from the Administration, the  
10 need for additional staff. You currently have how  
11 many investigators?  
12 MR. DAVIES: We have no investigators.  
13 DOI is our statutory investigator. We have none.  
14 COUNCIL MEMBER ADDABBO: Okay.  
15 MR. DAVIES: As this is written, we  
16 would not do the investigation. The investigation  
17 would be done by DOI. We would, however, need

18 additional staff to address all the other issues.

19 The prosecutorial Enforcement side and the Legal

20 Advice side.

21 COUNCIL MEMBER ADDABBO: What are the

22 numbers in your staff right now?

23 MR. DAVIES: Right now we have a total

24 of -- an authorized head count of 19. In Legal

25 Advice, we have only three attorneys. In

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2 Enforcement, we have only four attorneys. And as I

3 say, they're barely afloat in both of those units.

4 We cannot take on anything additional. At all, at

5 this point, without more staff. We need one more --

6 we need a Deputy Director in the Enforcement unit,

7 which we lost a while ago. For other reasons. And

8 also, we would need one junior attorney in the Legal

9 Advice unit. So together, you're talking about

10 roughly, well, certainly under \$200,000. Probably

11 about \$175,000 something like that or \$160,000,

12 \$175,000.

13 COUNCIL MEMBER ADDABBO: Thank you

14 very much. Thank you Mr. Chair.

15 CHAIRPERSON FELDER: Just to go a

16 little bit along that, is that I would ask of there

17 -- is there still anyone from the Administration

18 in the room? No? Well, in any case, I would like  
19 to ask you know, if we can make sure, that also,  
20 before the next hearing that we have, to get very  
21 specifically what the commitment is going to be in  
22 terms of the budget, for the agencies that are going  
23 to be impacted. And how many additional people  
24 they're going to have. Because we don't want to  
25 just enact legislation and then have them come back

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2 and say they can't -- you know, every agency sort  
3 of comes back when we ask them, do you need more  
4 money? None of the agencies can say that we need  
5 more money. Because then they get into trouble. So  
6 they usually say - in the testimony -- Mr.  
7 Newman, the General Legislative Director here, it  
8 shows that in the City's testimony, they do make a  
9 general statement about ensuring that appropriate  
10 resources are available. But since we have  
11 confidence in the Administration, but we want to  
12 make sure that you, in fact, get the money and the  
13 people you need, I think that it's incumbent upon  
14 us, before we pass this bill, to get that commitment  
15 in writing for the agencies that will be impacted.  
16 Do any of my colleagues have any

17 questions?

18 Thank you very much.

19 MR. DAVIES: Thank you.

20 CHAIRPERSON FELDER: Emmanuel

21 Michalos, from the Clerk's Office, the City Clerk's

22 Office. Do you have testimony? How long is it?

23 MR. MICHALOS: Six or seven pages.

24 CHAIRPERSON FELDER: Okay. So I'm

25 going to ask you to gather your thoughts for a

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2 minute, and I'm going to ask you not to read your

3 testimony. I would rather you highlight those

4 portions of the hearing so far that you either

5 disagree with or have not been covered. Is that

6 okay?

7 MR. MICHALOS: Right. I'll discuss

8 Intro. 190.

9 CHAIRPERSON FELDER: Whatever you

10 want. I'm just saying, if you can limit your

11 testimony to those areas either that you disagree

12 with, you know, somebody said something you disagree

13 with, or something that wasn't covered yet. I know

14 I'm throwing you for a loop, but it's better that

15 way.

16 MR. MICHALOS: I'm going directly to

17 Intro. 190.

18 CHAIRPERSON FELDER: Thank you. And  
19 just identify yourself for the record.

20 MR. MICHALOS: My name is Emmanuel  
21 Michalos. I'm the Director of Finance for the City  
22 Clerk's Office. I'm here to deliver testimony on  
23 behalf of Victor L. Robles, City Clerk, and Clerk of  
24 the Council, with respect to Intro. 190.

25 Now, the Intro. 190 proposes to add

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2 to the duties of the City Clerk two significant  
3 tasks: One is the requirement that random audits be  
4 conducted on statements and reports filed by  
5 lobbyists; and two, the collection and storage of  
6 quarterly filings of fund raising/ political  
7 consulting reports from lobbyists who engage in such  
8 activities. The City Clerk is required to post by  
9 March 1, an annual report on the Internet,  
10 indicating, among other things, the number of  
11 reports received, and resolution thereof, the number  
12 of random audits, and the outcomes and the number  
13 and amount of civil penalties imposed.

14 There is also a requirement for the  
15 fund raising/political consulting reports to be kept

16 electronic form.

17 In addition, Intro. 190 makes clear  
18 that all lobbyists reports are to be stored in  
19 electronic form and that all filings are to be  
20 electronic. There is no longer any provision for  
21 in- person or mail filing.

22 Intro. 190 also increases the  
23 penalties on lobbyists not in compliance, authorizes  
24 the City Clerk to report to the Department of  
25 Investigation any criminal violations of the law,

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2 not violations of the lobbying law, by lobbyists,  
3 and authorizes DOI to train City Clerk personnel as  
4 necessary.

5 Our office is now in the process of  
6 formerly requesting an increase in our personal  
7 services budget for the hiring of additional  
8 personnel and corresponding head count increase to  
9 ensure that we have the capacity to carry out the  
10 provisions of this legislation. The request seeks  
11 to add four employees to our staff, with the  
12 appropriate computer and legal background. We will  
13 also seek additional funds in other than personal  
14 services budget to acquire necessary computer  
15 equipment to facilitate the conversion from paper-

16 based system to a computer based system.

17                   The City Clerk appreciates the  
18 support of the Council and the Mayor to allocate  
19 additional resources necessary to effectively carry  
20 our new mandate.

21                   In conclusion, the City Clerk would  
22 like to thank all of you for the opportunity to  
23 participate in this proceeding. I look forward to  
24 your questions and to your input regarding Intro.  
25 190.

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2                   CHAIRPERSON FELDER: Thank you very  
3 much. Again, I would like for the City Clerk to  
4 make a -- to give us, on record officially, in  
5 writing, exactly what they anticipate it will cost,  
6 and you know, what the manpower necessary to be able  
7 to carry out the provisions of this law. Not at  
8 this time, but at a future, to provide that to this  
9 Committee.

10                   MR. MICHALOS: We will do so.

11                   CHAIRPERSON FELDER: Thank you very  
12 much.

13                   The other question -- I have just a  
14 few quick questions. To your knowledge, are there



15 lobbyists that consistently do not comply with the  
16 provisions that exist now?

17 MR. MICHALOS: We've had times where  
18 we've had to issue warnings by certified mail that  
19 they have not filed. And once we do that, they do  
20 respond. We haven't had to issue penalties, so they  
21 will respond to the certified mail.

22 CHAIRPERSON FELDER: How many times do  
23 you warn somebody?

24 MR. MICHALOS: I wouldn't think --  
25 two, three times. I wouldn't go past that.

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2 CHAIRPERSON FELDER: You mean like  
3 after the third time, --

4 MR. MICHALOS: If they don't respond  
5 --

6 CHAIRPERSON FELDER: If they don't get  
7 it. But does it ever happen, that you warn somebody  
8 six times?

9 MR. MICHALOS: No.

10 CHAIRPERSON FELDER: No. Okay. You  
11 mean, like after the third time, you know it's not  
12 going to help? Or you just don't do it.

13 MR. MICHALOS: No, no. Everybody has  
14 to register.

15 CHAIRPERSON FELDER: But in other  
16 words, after three warnings, they comply.

17 MR. MICHALOS: They understand that  
18 they have to comply.

19 CHAIRPERSON FELDER: Okay. So under  
20 the law, you only have to warn them once. But you  
21 warn them three times now, right?

22 MR. MICHALOS: Well, I've heard of  
23 occasions where they do two, three times. But they  
24 were responsive.

25 CHAIRPERSON FELDER: Right. The point

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2 that I'm trying to make has less to do with the City  
3 Clerk, but rather to do with the legislation.  
4 Again, is that if we're going to spend -- the  
5 legislation costs the City money as well. And just  
6 to make bills to make us look good, that's not the  
7 purpose of a bill. Or it shouldn't be, anyway. So  
8 all I'm saying is, that I think it should be clear  
9 that if we are going to enact new legislation,  
10 lobbyists, if under the law, they're supposed to get  
11 one warning, that's all they're going to be getting.  
12 They're not going to be getting two warnings, or  
13 three warnings by the City Clerk. Is that true?

14 MR. MICHALOS: Yes. Now that they  
15 have stiffer penalties, they will respond.

16 CHAIRPERSON FELDER: Okay. But I'll  
17 just ask the question one more time. And I'm not  
18 trying to trick you. I'm just trying to make a  
19 point, and the point is, that if we are trying to be  
20 strict, and strict means instituting through  
21 legislation, a variety of new impositions on  
22 lobbyists, that means that the City Clerk, under the  
23 law, is supposed to warn the lobbyists once now. And  
24 the City Clerk doesn't have the leisure to decide  
25 whether they should give somebody two or three

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2 chances. All I'm saying, suggesting is that the  
3 atmosphere around the lobbyists laws has to be  
4 consistent. If we're going to implement more  
5 restrictions, that means that it has to go all the  
6 way through. And the City Clerk can't decide to  
7 give somebody a break. Not saying they do now, but  
8 if under the law, you're supposed to warn somebody  
9 once, then that's going to be it. Because if we're  
10 saying lobbyists can't give anybody gifts, that's  
11 it. You know, I think that's clear.

12 MR. MICHALOS: They will receive one  
13 warning.

14 CHAIRPERSON FELDER: I think that's  
15 the story. And we're going to get from you, the  
16 details in terms of the costs that you need, the  
17 manpower and the money. I thank you for coming  
18 today.

19 MR. MICHALOS: Thank you.

20 CHAIRPERSON FELDER: Do you have --  
21 I want to recognize Councilman David Yassky, who  
22 just joined us. And at the same time, call Nicole  
23 Gordon, from the Campaign Finance Board, with Carole  
24 Campolo, Sue Ellen Dodell, no, that's not right.

25 MS. GORDON: It's Carole Campolo and

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2 Sue Ellen Dodell.

3 CHAIRPERSON FELDER: No, it looked  
4 like a Hebrew "i" in it, and I couldn't read it.  
5 Carole -- it is an "i" right? But it's almost  
6 pronounced the same way in Hebrew. Carole Campolo,  
7 okay. And again, I would just ask that rather --  
8 you know, I think it's much more productive --  
9 rather than discussing everything over again, to  
10 please get to the heart of anything you disagree  
11 with or anything that hadn't been said. And I would  
12 appreciate that.

13 MS. GORDON: There are just two or  
14 three points that I think would be helpful for us to  
15 make here, and just preliminary to that, I would  
16 like to say that we've had very productive  
17 conversations with Mr. Newman. And I know Ms.  
18 Johnson has been helpful, and we look forward to  
19 continuing to work with them. Because some of the  
20 things that I would go into detail with, I'm going  
21 to put to the side, knowing that these are issues  
22 that we're going to try to work together on.

23 But I would like to raise a couple of  
24 larger issues, which I think echo some of the  
25 concerns that some of the Council Members described.

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2 Number one, we believe that there is  
3 a much simpler way to deal with this issue, assuming  
4 that the Council wants to go forward, and take  
5 matching funds out of the equation, when lobbyists  
6 contributions are involved. We believe that the  
7 burden could be taken away from the candidates, and  
8 away from contributors generally, who some of whom  
9 may not know anything about what lobbyists do, or  
10 may wonder whether they fall within a definition  
11 that's in a contribution card.

12 We believe that the way that this can

13 be handled is, as long as the City Clerk database of  
14 lobbyists is up to date, and state- of- the- art,  
15 and lobbyists are required to include information on  
16 that form, you can target your questioning and  
17 investigation just to that information and avoid the  
18 burden on campaigns, the burden on the average  
19 contributor, and just use that database, have the  
20 Campaign Finance Board database speak to the  
21 database at the City Clerk's Office, and handle it  
22 without all this extra demand. And  
23 incidentally, that would go to your other question  
24 about the demands on our agency, because obviously,  
25 if we don't have to spend a lot of time educating

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2 candidates, if we don't have to have new  
3 contribution cards, if we don't have to deal with  
4 worried contributors, and look at documentation, and  
5 so on. If we can be using an electronic means for  
6 doing this, we believe that would be a much more  
7 effective and less- burdensome way to proceed.  
8 And as part dealing with the entire  
9 area of how to deal with contributions from those  
10 who do business with the City, of whom lobbyists are  
11 one subset, in general, we would urge that the

12 Council always take what we call the SEC approach.  
13 The SEC tells brokerage firms, if you guys make  
14 contributions over \$250 to people, or if you make  
15 any contributions to people that you don't have a  
16 right to vote for, you can't do business with that  
17 jurisdiction. The burden is placed on the person  
18 who wants to do business with the City. Not on the  
19 candidate. Not on the average contributor.

20                   So that would be my number one  
21 message to you, that I hope you can take into  
22 account. And incidentally, the SEC approach is the  
23 same approach that's adopted for doing business  
24 contributions in New Jersey and Connecticut. And a  
25 lot of other places.

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2                   Secondly, we do believe that a lot of  
3 your members raised important questions, questions  
4 that anyone looking into this area would want to  
5 raise about what the factual record is, what level  
6 of problem this is. Perhaps even the question  
7 whether contribution limits, as you were suggesting,  
8 are still an issue, as opposed to the amount of  
9 matching, and whether there will be a consequence  
10 that is different from what is expected here.

11 Our board has, for some time now, and

12 we will be closing this up in the next couple of  
13 months, doing a broad study of doing business  
14 contributions, including lobbyists contributions,  
15 and we think the wisest course would be to delay at  
16 least 192, for long enough for you to have the  
17 benefit of our factual record and thinking on this,  
18 so that doing business areas in general are treated  
19 consistently and fairly, and in proportion to what  
20 they mean in the public record.

21                   And in that respect, I would just  
22 point out that for example, we have very  
23 preliminarily, because this legislation came to us,  
24 taken a very quick look -- I don't want to suggest  
25 that it's final at all -- but we took a very

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2 preliminary look at what we thought we could figure  
3 out about lobbyists contributions. And it does not  
4 seem that the number of contributors who also are  
5 lobbyists is a very large number. Where lobbyists  
6 may be having more influence on campaigns is through  
7 fund raising and through being intermediaries. Now  
8 that does suggest again, that maybe a factual record  
9 that's developed in a little more detail would be  
10 helpful to the Council as it considers what to go



11 forward with.

12                   In my testimony, which I hope you all  
13 read, but I'm not going to take up your time with  
14 the details, a lot of my comments would be mute if  
15 you would take this other approach of going through  
16 the databases rather than asking the campaigns and  
17 the contributors to bear the burden of compliance.  
18 But nonetheless, I do want to emphasize, whatever  
19 you want our board to police, should be mirrored by  
20 the information you're asking the lobbyists to give  
21 to the City Clerk's Office. Right now, there is not  
22 a complete congruence. This is something we've  
23 raised, and we know that the Council staff is  
24 prepared to work with us on that.

25                   Another kind of question that was

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2 raised that also has to do with this question of  
3 evaluating the meaning of this. We do have some  
4 potential questions about things like, this current  
5 version of the legislation appears to regulate  
6 secretaries of people who do lobbying, and their  
7 spouses. It does not regulate partners in law  
8 firms, where some are lobbyists and others don't  
9 lobby. And those kinds of very deep questions just  
10 might warrant your attention.

11                   If you do go forward with the bill as  
12 written, then we would urge a lot of technical but  
13 also serious changes. For example, we don't believe  
14 that enforcement should depend upon if information  
15 comes in after the fact, after matching funds have  
16 been given out, we do believe, in any event, that  
17 that should be recoverable by the City. And should  
18 not turn on either intent or on the timing in which  
19 that is discovered.

20                   And I think beyond that, I think  
21 beyond that I would just answer any questions you  
22 have. But I would hope that someone -- that you  
23 will review the testimony as written.

24                   CHAIRPERSON FELDER: Councilman  
25 Yassky.

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2                   COUNCIL MEMBER YASSKY: Thank you  
3 Chair Felder. And first, let me just say -- I  
4 know I'm not a member of this Committee, so I really  
5 appreciate your indulging me in participating here.  
6 This is an appropriate time to be here, I guess,  
7 because of the appearance of Nicole Gordon.

8                   I just wanted to tell you and the  
9 other members of the Committee, first of all, I

10 strongly do support the package of bills that you're  
11 hearing today. And I hope that you will move on  
12 them speedily. Because I think they are very much  
13 worthwhile.

14                   Indeed, I think there are  
15 opportunities to go further. And Nicole mentioned  
16 some of these, or really one of the area that I want  
17 to focus on, which is the ability of lobbyists to  
18 raise money for candidates. For incumbency  
19 particularly. I think that the Committee should  
20 consider prohibiting altogether, lobbyists from  
21 serving as intermediaries. And I'm curious -- I  
22 know that that was on the Campaign Finance Board  
23 considered, ultimately did not do. May I ask for  
24 feedback on that?

25                   Can you tell me, Nicole, what was the

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2 process there?

3                   MS. GORDON: Well actually, the Board  
4 is only now going to be concluding its study of the  
5 whole subject area of doing business and has never  
6 taken a position about that. And I did not mean, by  
7 my pointing out that anomaly, to suggest that the  
8 Board has a particular position on it, but just to  
9 suggest that a full record before the Council, that

10 as best we can assemble it, which explains how many  
11 contributions, what percentage come from lobbyists,  
12 as far as we're able to tell that, how much money  
13 gets raised through intermediaries or through fund  
14 raising by lobbyists. That that kind of information  
15 might alter one's view about which area should be  
16 targeted. What the most important ones are, or  
17 whether many need to be targeted. Or you know, one  
18 could, I suppose also reasonably conclude, none at  
19 all.

20 I'm just -- our board has not come  
21 to any conclusions about those substantive issues,  
22 because our board is still conducting its doing  
23 business study.

24 COUNCIL MEMBER YASSKY: Okay. Well  
25 look. I was curious -- maybe I've been

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2 misunderstood, or didn't fully understand what your  
3 -- what the history was there. But I do want to  
4 -- I'd like to just put out there, I think that  
5 this Committee should, or the Council should,  
6 consider really going further. And prohibiting  
7 lobbyists from acting as intermediaries. It's been  
8 suggested to me that there are first amendment

9 issues there, and you know, you're kind of  
10 interfering with people's right to support  
11 candidates that they choose. It seems to me that  
12 when you're talking about a registered lobbyists,  
13 who is in the business of seeking government action  
14 on items, then, I think that -- you know, Buckley  
15 against Valeo (phonetic) the case that started this  
16 all here, strongly says that when you're -- when  
17 the government is acting to forestall potential  
18 conflicts of interest, you really have a lot more  
19 leeway there. In the campaign finance area. And I  
20 believe it would be constitutional to do it.

21                   At the very least, you could deny  
22 matching funds not just to contributions from  
23 lobbyists themselves, but for any contribution for  
24 which a lobbyist is an intermediary. In other  
25 words, if you allow a lobbyist to collect you know,

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2 and deliver, ten \$250 checks, then that's \$10,000 as  
3 opposed to really, \$12,500 as opposed to \$2,500.  
4 And I think that we ought to -- we ought to be  
5 concerned about lobbyists delivering bundles of  
6 contributions.

7                   So I hope the Committee will consider  
8 those ideas as you move forward on this legislation.

9 Thank you Chair Felder.

10 CHAIRPERSON FELDER: Thank you.

11 I have mixed feelings about what  
12 Council Member Yassky said. Only because I think  
13 that at the same time that it's important to add  
14 some of the restrictions that we're trying to  
15 impose, to make things purer, I think if somebody is  
16 intent -- you know, if the intent is there, it's  
17 not difficult to -- you know, it's not that much  
18 more difficult to get around what Council Member  
19 Yassky refers to as bundling ten checks and  
20 prohibiting matching funds for all of them. So if  
21 anyone has any sense, so you tell the ten people,  
22 please send in your contributions on your own. And  
23 that's not bundling. And whoever is doing the  
24 lobbying, if they have any sense, they come to an  
25 elected official and say, by the way, guess what?

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2 You know, there are ten people who live on my block  
3 who love you. And they send you \$250 contribution.

4 So I'm not sure. I'm not, you know,  
5 in the quest to try to make things perfect,  
6 sometimes we encourage people to do more and more of  
7 that which is not. There needs to do something, I

8 agree. I'm not sure that what you're suggesting  
9 will necessarily help. I think it will just make  
10 the lobbyists have to work a little harder to avoid  
11 being in violation of the law.

12 Do you want to respond?

13 MS. GORDON: Well just on that point  
14 about the intermediaries. Right now, the way the  
15 law is drafted, it does not even require a lobbyist  
16 who is an intermediary, but happens not to have made  
17 his or her own contributions, to be disclosed. So  
18 there are some wrinkles and things, which I know,  
19 are just going to be cleaned up in the process, as  
20 this goes forward.

21 And I did also want to say, you know,  
22 having part of my written testimony, I did not want  
23 to fail to note that our board does believe that  
24 this whole area of doing business contributions  
25 including lobbyists, is a very difficult and

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2 important area, and that both the appearance and the  
3 reality must be addressed. And the board is working  
4 very hard to make intelligent recommendations to you  
5 about it.

6 So the board does applaud the Council  
7 for undertaking this study. And looks forward to

8 working closely with you to do the best we all can  
9 in perfecting an approach.

10 CHAIRPERSON FELDER: Thank you very  
11 much.

12 Okay, thank you very much. We have  
13 two panels that we're going to be calling up. Is  
14 there anyone that has submitted a sheet early, early  
15 on that's in opposition to these bills? I just, for  
16 the record, find it amazing that no one is here to  
17 testify in opposition to any of the bills. Which is  
18 -- I'm doing a great job on that? Okay. No,  
19 I'll tell you why I find it very, very, very, very,  
20 entertaining. Because to me, what it really is  
21 saying is that we do have to do something to make  
22 things better. - You're scaring me Robert, move  
23 away. Okay. We do have to do some sort of  
24 legislation to improve things. But for anyone to  
25 think that business as usual, in terms of lobbying,

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2 is not going to continue to exist in one way or  
3 another, the proof of that is that there's no one  
4 here to testify in opposition. And when no one is  
5 testifying in opposition is proof that the people  
6 who are doing this business are qualified to do what



7 they do best, which is lobby and raise the money,  
8 you know, and we have to still, there is a reason to  
9 do what we're talking about, to send a message that  
10 things maybe aren't as easily done as possible. But  
11 I still would have been nice to hear from somebody  
12 who thought that maybe something a little off with  
13 this bill, other than the Council Members.

14                   You're still threatening me you know.

15       Okay. So we're going to do two panels of four  
16 each. We have Megan Quattlebaum. Okay. Common  
17 Cause. Dick Dadey, Citizens' Union. Douglas  
18 Israel, Citizens Union. And -- okay, so we'll put  
19 five. Gene Russianoff. And I have NYPIRG. And Ms.  
20 Adrian Kimmelson (phonetic).

21                   I'm going to ask -- we need one  
22 more chair, I think. Can one of the Sergeant- at-  
23 Arms? If not, I'll get it. Here, we could take one  
24 of the chairs here. So I just want to again --  
25 you're welcome. I just want to say, whether it's

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2 Citizens Union or all the other wonderful agencies  
3 that are here, I would ask you not to read your  
4 testimony. Because no one is interested in hearing  
5 it. What we are interested in hearing from you is  
6 again, anything that you either disagree with,

7 anything that was said so far, not anything that  
8 will be said, anything that was said so far, to  
9 either disagree, or anything that was not addressed,  
10 to address it. And I would ask Dick Dadey, will be  
11 our first witness.

12 MR. DADEY: Good afternoon Council  
13 Member Felder and members of the Committee. Thank  
14 you for this opportunity to testify. I'm here with  
15 my colleague at Citizens Union, Doug Israel, who  
16 will give us some portion of this. We will keep our  
17 comments to focus along the lines that you have  
18 suggested. You know, I do want to thank the  
19 Speaker, the City Council, and the Mayor in taking  
20 this very positive step forward for the City of New  
21 York and its citizens in addressing these issues.  
22 And join in applauding their proactive and  
23 cooperative effort.

24 The City of New York is fortunate  
25 that no major lobbying scandal has recently beset

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2 City government. But then again, the registration  
3 and reporting of lobbying activity has been done  
4 strictly on an honor basis. To the best of our  
5 knowledge, no one who has not been registered to

6 lobby, but should be, has been called to task, and  
7 told to register. And no one who has been  
8 registered for the past five years, has ever been  
9 fined or penalized, if ever. So who really knows  
10 what is going on out there in the influencing of our  
11 government. We do know this: Many who should be  
12 registered are not. Because there is confusion over  
13 the requirement to lobby and there is no enforcement  
14 of the law requiring them to lobby. One only needs  
15 to go to the steps of City Hall during budget season  
16 and see the number of advocates and lobbyists who  
17 are there to get a slice of the pie, and the check  
18 the City Clerk's Office to see that many are not  
19 registered to lobby.

20 Or only one need go to a Community  
21 Board meeting and see the number of developers who  
22 are either not registered to lobby, or not fully  
23 reporting their lobbying activity. Or one only need  
24 know that there are countless meetings among clients  
25 and their retained lawyers and City officials, over

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2 an important economic development project, and  
3 realize that neither the client nor the lawyer is a  
4 registered lobbyist. Hiding behind the cloak of  
5 attorney/client privilege.

6                   We do not necessarily assign blame  
7 for these lapses to the parties involved, though  
8 they do need to bear the responsibility. But  
9 rather, to the failure of government to adequately  
10 enforce the existing law, and sufficiently inform  
11 those who lobby about the law's registration and  
12 reporting requirements.

13                   We agree with many of the provisions  
14 that have been laid out here in these important  
15 pieces of legislation. We do have some concerns and  
16 recommendations on improvements. And we're going to  
17 quickly hit the highlights here.

18                   The definition of lobbyist and  
19 political consultants must be made clearer, so that  
20 there is no misunderstanding moving forth, as to who  
21 falls into these categories. And that those who are  
22 required to file are absolutely clear that it is  
23 their responsibility to do so. We believe that many  
24 who read the current definition of lobbying believe  
25 that it does not apply to their activity with

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2 government. And therefore, decide not to register.

3                   Earlier, someone from the City

4 Clerk's Office was talking about the fact that they

5 have full compliance. Well, they have full  
6 compliance with only those who are registered to  
7 lobby. Not with those who are not registered. And  
8 they make no attempt to register those who are not  
9 registered. And that is a major failing of the City  
10 Clerk's Office.

11 We believe in more clear and more  
12 explicit definition of lobbying should be proposed  
13 to unregistered lobbyists who read the section of  
14 the law, and then realize they need to register.  
15 For instance, many who seek City funds during the  
16 budget process are not required to lobby because the  
17 definition does not say "budget". Few know that the  
18 City budget actually is considered an intro, if you  
19 even know what that means.

20 The City Clerk, due to a lack of  
21 resources, or a clear mandate for action has not  
22 lived up to the task of enforcing lobbying  
23 violations in the past. One only need look at how  
24 citizens find out about lobbying information on the  
25 web, and realize the lack of importance the City

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2 Clerk places upon his authority to enforce the  
3 current law. For those seeking lobbying  
4 information, one has to strangely go to

5 www.marriagebureau.com.

6                   Therefore, we are concerned about  
7 investing greater enforcement authority in the hands  
8 of the City Clerk, without at least more resources,  
9 a greater appreciation by the current City Clerk for  
10 his responsibilities to enforce the law, and greater  
11 oversight of the Clerk's enforcement.

12                   We had trouble that it's also the  
13 Clerk, who is appointed by the Council, to enforce  
14 the law which holds much sway over the decisions by  
15 the Council. It is too circular a relationship, and  
16 not nearly independent enough. We believe that a  
17 truly independent body is what is needed in order to  
18 enforce the lobbying law, and see that it is  
19 appropriately enforced.

20                   That said, we also recognize that it  
21 would probably require a Charter amendment in order  
22 for such a new entity to be charged with such  
23 authority. We ask the Mayor and the Speaker to put  
24 this on the list of things to do.

25                   And I'm going to ask my colleague at

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2 Citizens Union, Doug Israel, to make the final  
3 points.

4 MR. ISRAEL: Thank you. My name is  
5 Doug Israel, and I'm the Public Policy and Advocacy  
6 Director for Citizens Union. And I'd just like to  
7 add three other suggestions to strengthen the bills.

8  
9 Building on the line of questioning  
10 from Council Member Yassky, I'd like to reiterate,  
11 and add some figures to the fire. The proposals,  
12 while effectively limiting matching funds for  
13 contributions from registered lobbyists, does  
14 nothing to limit matching funds for contributions  
15 that have been bundled by a lobbyist as an  
16 intermediary. The bundling of funds to candidates  
17 each election season represents hundreds of  
18 thousands of dollars. It is not uncommon for an  
19 intermediary to bundle between \$100,000 and \$150,000  
20 for a candidate over an election cycle. And a good  
21 portion of these funds qualify as matching. A  
22 preliminary guess on my part is about 15 to 20  
23 percent of the funds that are bundled are actually  
24 matchable. Because many of them are above \$250.

25 A quick analysis by Citizens Union,

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2 which is not available yet, reveals that, of all the  
3 top ten lobbying firms, based on their revenue,

4 every single one of them had an employee that  
5 bundled campaign contributions from 2001 to 2005.  
6 The City should examine the appropriateness of  
7 whether these funds should be matchable, something  
8 that we are currently examining as well.

9                   The second point I'd like to add is  
10 the bills do not address "pay to play" activities  
11 that are part and parcel of the larger issue of how  
12 political support in a form of contributions  
13 influences legislation and the awarding of  
14 contracts. The City must ensure that those who have  
15 business with the City are not exerting undue  
16 influence over the process by way of campaign  
17 contributions, to political committees of those in a  
18 position to affect decision making.

19                   And finally, we ask that the  
20 legislation be amended to see that the reporting  
21 requirements and forms are similar in substance and  
22 timing to those at the State level. Curiously, the  
23 City Clerk's filing deadlines quarterly, but the  
24 second quarter is only two months long, ending on  
25 May 31st, and the third quarter is four months long,

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2 ending on September 30th. Having the local report



3 occur bi- monthly would be an easier way for local  
4 lobbyists to comply, since they also have to report  
5 back to the State.

6                   And finally, on behalf of Citizens  
7 Union, I would like to thank you for the opportunity  
8 to testify today. Intros. 190, 191, and 192 present  
9 an opportunity to help ensure that the political  
10 process is less encumbered by the influence of  
11 special interests. And that our elected officials  
12 are shielded from the corrupting influence of money  
13 and politics. While the ability to lobby  
14 legislators is an important part of our democratic  
15 process, it is imperative that we ensure that all  
16 New Yorkers have this opportunity for their voice to  
17 be heard, and the influence of those with deep  
18 pockets does not steamroll the voice of average New  
19 Yorkers.

20                   We believe the proposed legislation  
21 could help ensure that the under- represented and  
22 those without connections, where the funds to gain  
23 access are not shut out of the process.

24                   We urge the Council to consider the  
25 testimony that our organization, and the other

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2 groups have given here today, and we stand ready to

3 continue to work in a deliberative and open process  
4 to help strengthen the legislation. Thank you.

5 CHAIRPERSON FELDER: Thank you. Mr.  
6 Russianoff. No problem.

7 MS. QUATTLEBAUM: We'll be extremely  
8 brief.

9 CHAIRPERSON FELDER: You can take as  
10 much time as you want, as long as you're saying  
11 something new. That's all. We're here the whole  
12 day. Council Member Vallone said he has nothing  
13 else to do. And Council Member --

14 MS. QUATTLEBAUM: All right. Well,  
15 again, I'm Megan Quattlebaum. I'm the Associate  
16 Director of Common Cause, New York. And like our  
17 colleagues at Citizens Union, both Common Cause and  
18 NYPIRG support Intros. 190, 191, and 192. And while  
19 I do think that clearly, from some of the testimony  
20 we've seen here today, there can be perhaps things  
21 done to make the laws more effective, and more  
22 enforceable. I just want to be clear that in  
23 spirit, while there may not have been scandals here  
24 in New York City, perhaps at all, but certainly not  
25 on the scale of what we've seen in Washington, or

2 even closer to home, in Albany. There are some real  
3 problems that we're addressing with this  
4 legislation. First and foremost, as Dick Dadey,  
5 from Citizens Union talked about, enforcement by the  
6 City Clerk, even of the existing lobby law has not  
7 been adequate. I think we've had a real "cop on the  
8 beat" in Albany. We've had someone in the form of  
9 the State Temporary Commission on Lobbying, who has  
10 really been watching out for what lobbyists are  
11 doing on the State level. But in our opinion, the  
12 City Clerk hasn't even exercised his limited  
13 enforcement capacities of the existing, current  
14 laws.

15                   So we do think that one great thing  
16 about Intro. 190 is it beefs up those enforcement  
17 capacities of the City Clerk. We'd also note that  
18 there have been arguments made that the City Clerk  
19 doesn't have tools and resources needed to do the  
20 job of enforcement. And we think the bill, this  
21 current bill, has a couple of provisions that  
22 address that issue, including training of Clerk  
23 staff by the Department of Investigation, and the  
24 joint Council Mayoral Commission, that will  
25 ultimately review the enforcement, and really have a

2 track record at that point to see how the City Clerk  
3 is doing, and perhaps offer further improvements.

4 But I mean, from the small to the  
5 large, I think, as Dick mentioned, one thing you can  
6 look at to see what the limitations of enforcement  
7 have been, are how many lobbyists are out there who  
8 are not registered, and possibly should be.

9 And another really important  
10 comparison, I think, is what's been happening in the  
11 City versus what's been happening on the State  
12 level. And for violations large and small, on the  
13 State level, if you do not file your registration,  
14 or your bi-monthly report, and you are supposed to,  
15 you'll be fined \$25 dollars a day. It's not clear to  
16 me that much at all will happen to you if you don't  
17 file a report that you're supposed to file with the  
18 Clerk.

19 Secondly, I just want to say that  
20 while there may be certain reasonable exceptions, I  
21 think the members of both of our organizations and  
22 members of the public see no reason why a lobbyist  
23 should be able to give a gift to a lawmaker, or why  
24 a lobbyist contribution should be matched by public  
25 funds.

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2                   So I think we're addressing --  
3 again, there may not be a scandal that we're  
4 addressing, but we are addressing some real problems  
5 that exist with the status quo.

6                   I do want to mention one other thing,  
7 which is that we do think that serious work still  
8 needs to be done to level the playing field. Our  
9 colleagues at CU and the folks from the Campaign  
10 Finance Board have mentioned that the issue of those  
11 doing business with the City is broader than just  
12 lobbyists who do business with the City. We have  
13 testified at the Campaign Finance Board's hearing  
14 once on this topic. We strongly encourage the  
15 Council to continue looking at those issues. And we  
16 specifically support trying to actually limit  
17 contributions from those who do business with the  
18 City, not just prevent them from being matched with  
19 public funds.

20                   So, we encourage an approach like the  
21 one mentioned by Nicole Gordon, that places the  
22 burden on the person who wants to do business with  
23 the City, rather than the candidate. But we do  
24 think that this is something that needs further work  
25 and exploration.

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2 MR. RUSSIANOFF: Good afternoon Mr.  
3 Chairman. I'm Gene Russianoff, with the New York  
4 Public Interest Research Group. On page two of my  
5 testimony, we in Common Cause have three specific  
6 recommendations that we would like to see considered  
7 in amending the legislation. Now they've been  
8 touched on before, but we think they're important to  
9 emphasize.

10 The first one is like the Campaign  
11 Finance Board and the Citizens Union, we believe  
12 that if contributions are bundled by lobbyists as  
13 intermediaries, those should not be matched either.  
14 I heard the colloquy between yourself and Council  
15 Member Yassky, and there always is a concern about  
16 driving contributions underground. But the way we  
17 see lobbyists flaunt their access and their power is  
18 by constantly intermediating and being kind of the  
19 collector of contributions, a nice term for it. And  
20 so we would like to see serious consideration given  
21 to that.

22 And then, we also think the law  
23 should be made easier for candidates to comply, by  
24 placing more responsibility on the City to help  
25 them. And right now, the law asks candidates,

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2 Council Members, and their opponents, to put all  
3 sorts of information on the bottom of the  
4 contribution card. It's almost like a Miranda  
5 warning. And extremely small fraction of the  
6 contributors are going to be lobbyists. So it's a  
7 lot of space taken up for limited -- Gordon said,  
8 what we would urge is that the City Clerk compile a  
9 list from time to time, specifically enumerated in  
10 the law. And it's kind of like a safe harbor  
11 provision. If you're a contributor that's on this  
12 list, by a civil program, or eyesight, you can  
13 determine whether you've been given a illegal  
14 contribution. Otherwise, you're going to have to  
15 sit down with the database for the lobbyists run by  
16 the City Clerk, and I wish you good luck, it's  
17 really hard.

18 And so, I think the regulatory scheme  
19 in the bill doesn't make sense, and is unfair to the  
20 candidates.

21 And then finally, the law's  
22 definition of political consulting activities, it  
23 requires certain lobbyists who conduct political  
24 consulting activities to report them, which we think  
25 is a good thing. However, the way the law reads,

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2 it's "the activities of a lobbyist who, for  
3 compensation, provides political advice to the  
4 Mayor, Public Advocate, Comptroller, Borough  
5 President, or a Member of the Council...". Well,  
6 you know, we provide political advice for  
7 compensation. I'm sure you would be happy to take  
8 some. I think it's just a mistake in the drafting  
9 that it doesn't attribute the compensation to the  
10 candidate or committee, or people affiliated with  
11 the candidate. So I think that's a technical issue  
12 that needs to be worked out.

13                   And then just lastly, we definitely  
14 join with our colleagues in trying to simplify the  
15 form. We're registered lobbyists. We have two  
16 separate reportings. Almost, you turn around and  
17 there's another reporting. And it doesn't make  
18 sense. The State is doing a very good job, in our  
19 opinion, of monitoring the lobbying activities, and  
20 so, to the extent that it's possible, it should be  
21 the same form. If the City needs an addendum,  
22 that's fine. But I'd like to see the same time  
23 schedule and attached to our testimony is a copy of  
24 the State Boards's form. Thank you very much.

25                   CHAIRPERSON FELDER: You have to go to



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2 the Marriage Bureau section of the website to get  
3 lobbying information?

4 MR. RUSSIANOFF: The exact website is  
5 www.nycmarriagebureau.com/lobbyist. And I think  
6 what this evidences, among other things, is that the  
7 City Clerk did not do this lobbying data form. It  
8 was done by the Department of Information Technology  
9 and Telecommunications. But it is true. You have to  
10 go to marriage bureau.com

11 CHAIRPERSON FELDER: And how did you  
12 find that out?

13 MR. ISREAL: It give you Google on New  
14 York City lobbying. That's the website that pops  
15 up. And you have to actually go through three  
16 different pages to actually get to the page inside  
17 that site.

18 MR. RUSSIANOFF: And what I did, I  
19 innocently visited the City Clerk's website, and I  
20 couldn't figure it out. So I called someone at the  
21 Clerk's Office who said, well, scroll down to the  
22 very bottom of the page, and where it says more  
23 information about lobbyists, click there. And  
24 amazingly enough, that's where this huge database is  
25 hidden. And the attorney said something to me like,

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2 I thought we had it fixed already.

3 CHAIRPERSON FELDER: There's a joke in  
4 there about marriage somewhere, but I'll leave it up  
5 to you to find that one.

6 Okay, thanks for your testimony.

7 I was very interested in some of the  
8 stuff that you echoed from Campaign Finance Board.  
9 Especially the issues of matching the databases.  
10 Because some of the timing issues are also  
11 interesting. If some of the reports that are going  
12 to have to be filed by the lobbyists, for example,  
13 if a lobbyists puts down certain information, what  
14 they believe to be so, and a candidate, for example,  
15 if we don't get the reports with enough time, in  
16 theory, a lobbyist can put something down, thinking  
17 like well, if I'm not sure, okay, so this was X, Y,  
18 and Z. Right? And the candidate files their own  
19 report, doesn't reflect it, and then you have --  
20 obviously, there's going to be a conflict. You  
21 know. And it's something that has to be straightened  
22 out. So with the issues that were mentioned about  
23 matching, that I think Nicole Gordon had mentioned?  
24 I think -- I imagine that would really take care  
25 of that problem without wasting a lot of money. And

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2 especially of the dates should coincide, as well.

3 It doesn't make sense that they should be on

4 different dates.

5 MR. RUSSIANOFF: Like you, we want a

6 law that's enforceable, and workable, and not an

7 unfair burden on the candidate, or the lobbyists.

8 Again, some of the provisions will affect us. I

9 think there's a larger issue here. The City has

10 maintained for quite some time that the scheme that

11 New Jersey and Connecticut and the SEC have, won't

12 work in the City. And that's the scheme where the

13 City is required to keep a list of who is doing

14 business with it. And then, if you give a

15 contribution, and you are doing business with the

16 City, or are a lobbyist, under the scheme we favor,

17 you would be debarred from doing business with the

18 City. We wouldn't slap the candidate for taking a

19 contribution. Because you know, thousands of

20 entities do business with the City. And then if you

21 add their spouses or their unemancipated children --

22 So in any event, we want to workable scheme.

23 CHAIRPERSON FELDER: I'm still harping

24 on the same issue, so because some of -- again, in

25 the quest to try to make this pure, it almost seems

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2 that we can come up with a lot more. So in theory,  
3 if I were the Chair of the Landmarks Committee,  
4 which I'm not anymore, and there were issues that  
5 were coming in front of a Landmarks Committee, by  
6 somebody who owns a home there, you know. Some of  
7 the issues that were raised earlier -- I'm only  
8 posing this because the public interests groups I'd  
9 like to hear, just briefly. The general issues of  
10 buying, if you want to call it that, of buying  
11 things. You know, lobbyists are in the business to  
12 try to get influence on issues. But people, whether  
13 they're individuals or otherwise, also have  
14 sometimes, and have become, you know, large  
15 influence peddlers, whether it's development and  
16 otherwise, and the -- I don't know where it's  
17 going to stop. That's you know -- and I'm not  
18 saying it should. Should not stop, I mean. I just  
19 don't know -- you know, I guess we have to try to  
20 do better, which is the goal. But there's a lot  
21 going on, and I don't know how much of an affect you  
22 know, really, other than sending a message, which is  
23 important in of itself, there's no question that the  
24 bills are very important. And they send a message.  
25 But in terms of fixing the system, or the way it

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2 works, or the way it doesn't work. I'm not sure.

3 MS. QUATTLEBAUM: Well, if I might

4 again raise this one issue. I mean, I think even if

5 we were to enforce the current lobby law

6 effectively, we would have made a step forward. I

7 mean, I think there are issues of, as Dick said,

8 people who should be registered not being

9 registered, and not being compelled to register by

10 anyone. And also, I think you know, there may be

11 issues beyond that, of there being no fine in

12 current law, or in fact, in these proposals, for

13 failing to filing a report on time. So very little

14 to compel you to do that. And then sort of lack of

15 clarity about what's being reported on the City

16 form. I mean, again, I think that there's more we

17 can do. But what I think this will do, is

18 substantially improve disclosure of lobbying

19 activities in the City of New York, and bring it

20 closer to being on par with what happens in New York

21 State. And the reason that that happens is not by

22 the good graces of lobbyists, it's because there is

23 an effective law, and there is a real cop on the

24 beat. And we know, we're lobbyists. On the State

25 level, if you do not file as you are supposed to

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2 file, there are reasonable, I think, consequences.

3 But that's just not true right now in the City.

4                   So I think there are some larger  
5 questions here. But in terms of addressing your  
6 concern of what difference this will really make,  
7 that is one difference this will really make. And I  
8 think it's an important one.

9                   CHAIRPERSON FELDER: Council Member  
10 Dickens.

11                   COUNCIL MEMBER DICKENS: Thank you so  
12 much Mr. Chairman. Thank you for your testimony.

13                   Can you just tell me, have you done a  
14 budget to tell me about what the cost would be to  
15 put in these additional provisions? What would be  
16 the cost to the City for putting all of this in  
17 place, say with COIB, what would be the additional  
18 cost? You don't have to break it down.

19                   MR. RUSSIANOFF: You know, what I can  
20 say is the Campaign Finance Board and the Conflicts  
21 of Interest Board testified here, and they're in the  
22 process of preparing budgets. They know far more  
23 than we do about their needs, and they know far more  
24 about reviewing agency requests than we do. So the

25 bottom line is that both agencies will need

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2 additional resources, and certainly, the City Clerk  
3 will.

4 COUNCIL MEMBER DICKENS: Thank you.

5 MR. DADEY: Mr. Chair, if I could just  
6 further respond to your question, and build upon the  
7 answer provided by Megan. You know, this law would  
8 not affect those who are average citizens who are  
9 volunteers, who are involved in their neighborhood  
10 associations, who are involved in their block  
11 associations. And participate in government by just  
12 communicating with a legislator. You know, in order  
13 to -- when you earn \$2,000 within a calendar year  
14 as a lobbyist, you must be required to register. So  
15 you know, a you know, -- having a -- treating a  
16 Council Member to you know, a pot luck dinner, at a  
17 block association annual event, would not be covered  
18 under this law. It would not try to limit or  
19 provide any kind of oversight for that legitimate  
20 activity by citizens. It's really when those people  
21 who are receiving compensation from the not- for-  
22 profits, or from the lobbying firms, that we want to  
23 make sure there's greater oversight.

24 COUNCIL MEMBER DICKENS: Dick, my

25 question wasn't about that really. Mine was about

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2 --

3 MR. DADEY: No, I was answering his  
4 question earlier.

5 COUNCIL MEMBER DICKENS: All right.  
6 Thank you.

7 CHAIRPERSON FELDER: I just want to  
8 make something clear that was stated earlier, I  
9 think by Conflicts of Interest Board, is that the  
10 issues that relate to the laws that the elected  
11 officials, in terms of gifts, \$50 gifts, or the  
12 hypothetical of an elected official going out for  
13 dinner, for a \$55 dinner -- I'm sorry, for a \$49  
14 dinner, with somebody who is a lobbyist, in essence,  
15 under the law, the elected official would not be  
16 violating anything. And the lobbyist would. Is  
17 that true?

18 MR. DADEY: As I understand it, the  
19 current law prohibits gifts over \$50. But if this  
20 lobbying law goes through, the revisions would ban  
21 the lobbyists from making any contribution.

22 CHAIRPERSON FELDER: I understand  
23 that.



24 MR. DADEY: But if you're not a  
25 lobbyist, you know, a registered lobbyist, I mean,

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2 you'd still -- you cannot provide -- I mean, you  
3 could give a gift, but the elected official cannot  
4 receive a gift from a non- lobbyist in excess of  
5 \$50.

6 CHAIRPERSON FELDER: That's not the  
7 point that I'm making. I think the point that I'm  
8 making is that in essence, under this law, if it  
9 goes into effect, we could have a situation where an  
10 elected official is in compliance with the law, for  
11 taking a \$49 dinner. Or a \$49 gift. And the person  
12 who is sitting down, the lobbyist, is in violation  
13 of the law, because they're not allowed to give  
14 anything. Is that true? I mean, I know that they  
15 talked about it before, but I think -- that's not  
16 true? I'll have the Conflicts of Interest Board  
17 come up later.

18 MR. RUSSIANOFF: I thought what they  
19 testified was that they would impose the regulation  
20 based on the intent of the Council, who zeroed out  
21 lobbyist gifts.

22 CHAIRPERSON FELDER: To zero out --  
23 which means?

24 MR. RUSSIANOFF: That a lobbyist  
25 couldn't give a Council Member -- you as a public

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2 servant, would be violating the rules of the  
3 Conflicts of Interest Board if you accepted a  
4 contribution of \$49.

5 CHAIRPERSON FELDER: But there is no  
6 such legislation, right? That's part of the  
7 problem.

8 MR. RUSSIANOFF: I think you need a  
9 referendum to make this kind of change, but the  
10 board can do it if you give it the regulatory  
11 authority, which I think is there in the intent of  
12 the law.

13 CHAIRPERSON FELDER: All right, we'll  
14 talk about it later. Thank you very, very much.

15 Okay. You know what? We will, --  
16 if the Conflicts of Interests Board is willing to  
17 come up for a moment, I would appreciate it. I  
18 think my colleagues as well. To clarify this issue.  
19 And I thank you for remaining all this time.

20 MR. DAVIES: I think --

21 CHAIRPERSON FELDER: Could you  
22 identify yourself again for the record?

23 MR. DAVIES: I'm sorry. Mark Davies,  
24 Executive Director of New York City Conflicts of  
25 Interest Board. And with me is Wayne Hawley, our

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2 Deputy Executive Director and General Counsel.  
3 Currently, the law is this. Chapter  
4 68 of the City Charter prohibits acceptance of  
5 valuable gifts from persons doing business with the  
6 City. Valuable gifts, under the Charter, is to be  
7 defined by the Conflicts of Interest Board.  
8 Conflicts of Interest Board has defined valuable  
9 gifts as \$50 or more, with a number of exceptions.  
10 And that regulates only public servants. Not  
11 lobbyists.

12 This bill regulates only lobbyists,  
13 not public servants. And it does not say -- it  
14 just says gifts. And it leaves it to the Conflicts  
15 of Interest Board -- we understand to determine  
16 what that means. So unless it is the Council's  
17 intent that you intend to zero out gifts by  
18 lobbyists, otherwise, I think we would want a  
19 consistent definition. We would not want to have  
20 the situation that you mentioned. That's exactly  
21 what we want to avoid.

22 COUNCIL MEMBER VALLONE: What do we do

23 to make sure that that occurs?

24 MR. DAVIES: I think you only have to  
25 put it on the record. I don't think we need an

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2 amendment. As I said, there's a number of points  
3 that I made -- I just want it in the record, that  
4 is enough, we believe, to protect us against law  
5 suits, of someone sues and says, well that's not  
6 what the lobby agent says, oh yes it is, that was in  
7 the legislative history.

8 If you could just put it in the  
9 testimony, and make it clear, this is what the  
10 Council says, is that it doesn't mean to zero out  
11 lobbyist, it means that the Conflicts Board will set  
12 what is a "gift" number one. And number two, that  
13 it is, as the statute does say, at our request, by  
14 the way, the statute does say that we should attempt  
15 to be consistent in adopting rules under this new  
16 legislation, and our existing rules under Chapter  
17 68.

18 COUNCIL MEMBER VALLONE: I would like  
19 to make sure that this is in the record before we  
20 vote on this. I don't know how that happens.  
21 Because we don't have the authority to speak for the

22 Council. So I'm going to have to leave that up to  
23 the esteemed Chair to figure that dilemma out.

24 CHAIRPERSON FELDER: I agree entirely  
25 with my colleague. And with you. And it just

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2 doesn't make sense. It's not fair. Unless it's  
3 clear, I think something has to be done. But again,  
4 who has jurisdiction? In other words, if we wanted  
5 to -- it's clear that unless -- there are two  
6 alternatives. One is to say lobbyists can give a  
7 maximum of \$50 to elected officials, which would be  
8 consistent one way. Or, if we're saying they're not  
9 permitted to give anything at all, who has  
10 jurisdiction to legislate that the elected officials  
11 are not allowed -- how does that get done? I  
12 don't understand.

13 MR. DAVIES: Well, it would have to be  
14 done -- except for a Charter referendum -- it  
15 would have to be done by the Board. I mean, the  
16 Board, in theory, could say, no, we're going to drop  
17 the \$50 down to zero dollars.

18 CHAIRPERSON FELDER: But you would  
19 want to hear from us, in essence, saying, look,  
20 instead of doing a referendum, we're telling you  
21 that we want you to drop it down to zero.

22 MR. DAVIES: Yes, because if you don't  
23 say anything, I think the inclination would be to  
24 interpret the lobbying law consistent with our  
25 existing rule.

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2 CHAIRPERSON FELDER: Which means that  
3 a lobbyist would be able to give a \$50 gift.

4 MR. DAVIES: Right. If you don't  
5 intent that, then-

6 CHAIRPERSON FELDER: Then that has to  
7 be made clear. Thank you very much. Thank you.

8 Our final panel, Ms. Adrian Kivelson,  
9 Marjorie Kellershay (phonetic), I'm sorry. Peter J.  
10 Kiernan, and Chad Marlow.

11 I would just ask you, the same thing  
12 I said before. If you have anything new to add, or  
13 to disagree about what was said, that's great. If  
14 you just agree with everything, then you could just  
15 say, I agree. Which ever one of you wants to start  
16 first, please go ahead.

17 MR. KIERNAN: Thank you Mr. Chairman.  
18 My name is Peter Kiernan. I am the Chairman of the  
19 New York City Affairs Committee of the City Bar  
20 Association, and I'm speaking on behalf of the City

21 Bar Association. I would just make a couple of  
22 points, if I may.

23                   Firstly, I just want to put on the  
24 record that the New York City Bar Association  
25 supports the aims of this lobbying reform package.

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2 We do so because of the widespread perception that  
3 lobbying activities involve the giving of gifts and  
4 the excessive contributions, and that has a  
5 corrosive affect on our system of participatory,  
6 representative government. However, as has been  
7 said by several people today, they don't have any  
8 scandals on the record. As the Campaign Finance  
9 Board pointed out, we don't really have a database.  
10 And the Bar Association believe that the perception  
11 of wrong doing is much greater than the actual  
12 reality.

13                   Secondly, one of the members raised  
14 the point about every New Yorker having the same  
15 rights. And with respect to the question of whether  
16 a lobbyist's contribution should be matched, I would  
17 say that the Bar Association has not completed a  
18 constitutional law analysis of that. But asks, is  
19 there a constitutional distinction between a  
20 lobbyist's contribution and that of an non-

21 lobbyist? Where one is matched by public funds and  
22 the other is not. And the same comment would go to  
23 those that would say that any fund raising by  
24 lobbyists, the products of that should not be  
25 matched. We would have the same concerns with

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2 respect to that, but we haven't completed the  
3 analysis. We hope that we will do so, but we hope  
4 that the Council here does that same.

5 Just lastly, I think it's important  
6 to point out that a lobbyist has a right to lobby.  
7 And the right to lobby is an essential aspect of  
8 represental (sic) government. It is  
9 constitutionally protected as core political speech.

10 So any restrictions that would be placed on those  
11 rights, would have to be consistent with First  
12 Amendment principles, and an example of that would  
13 be that it could not be vague. And I think we've  
14 had lots of points raised today about the vagueness  
15 of some of the provisions in these bills. And so we  
16 would add a cautionary note with respect to that.

17 I guess the very final comment I  
18 would make is that lawyers are used to dealing with  
19 the record. And as has been pointed out here, we



20 don't really have a record. There is a perception  
21 of abuse, and there is a need, I believe, as the  
22 very first witness testified, to get out in front on  
23 this, and we support that. However, there is action  
24 also at the federal level and at the State level,  
25 and there, they do have a record of abuse. And

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2 luckily, we don't have a record here. And so, the  
3 Council was advised, I believe by the Campaign  
4 Finance Board, perhaps to delay somewhat until a  
5 database is assembled. I think the Bar Association  
6 would associate itself with that recommendation.  
7 Thank you.

8 MR. MARLOW: Thank you Mr. Chairman,  
9 and members of the Committee. My name is Chad  
10 Marlow. I'm an attorney and an Executive Principal  
11 Advocate at the Public Advocacy Group. And as part  
12 of my work, I am a private lobbyists. I guess that  
13 makes me the only one to show up today.

14 Mr. Chairman, you made actually, a  
15 comment earlier that you were surprised not to see  
16 any negative cards in that stack. To the opposite,  
17 I'm not surprised in the least. Considering that  
18 lobbyists are all around the halls of City Hall, I  
19 find it interesting, but quite telling, that I'm the

20 only one who managed to make it into this Committee  
21 today. And I think there's a reason for that. I'd  
22 like to go into that with you.

23 But I would like to clarify one  
24 statement that's gone over and over again today,  
25 which I think is important that it be clarified. A

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2 lot of people have said that we have had abuses of  
3 lobbying laws in Washington and Albany, but not New  
4 York City. And I think technically, that's correct.  
5 But I think that there is a large amount of legal  
6 abuse of the lobbying system that's going on in New  
7 York City. And I think that part of the reason that  
8 this Committee is meeting is to make sure that  
9 current lobbying laws are followed. But another  
10 reason that they are meeting, which is equally  
11 important, is to create more and better laws to stem  
12 what currently is legal abuse of the lobbying  
13 system. And I applaud the Committee, the Mayor, and  
14 the Speaker, on taking such a proactive stance  
15 before the Jack Abramoff of New York City shows up  
16 on the scene. Because I think this Committee knows  
17 he is out there. There is no question about it. And  
18 it's not just one person, either.

19 I want to talk to you about why I  
20 have shown up today, and how I feel I represent  
21 certain lobbyists in the City, but not others. It's  
22 interesting to note that the term "lobbying" dates  
23 back to the practice of cornering legislators in  
24 their hotel lobbies, when they would come to and  
25 from legislatures. And at that time, all that

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2 lobbying entailed, it wasn't necessarily money  
3 involved, or knowing someone in particular, it was  
4 just anyone got there, cornered them and had a  
5 moment to make a very good, concise argument. And  
6 that is lobbying in its purest form. That doesn't  
7 exist today, nor could it.

8 But I think that the concept of  
9 having lobbying -- the purpose of lobbying being to  
10 inform members of the Council to make meritorious  
11 arguments upon which they can make what is the best  
12 decision for the City and their constituents, that  
13 is the proper purpose of lobbyists.

14 Now, there are two kinds of  
15 lobbyists. In the former category, which myself  
16 and my firm falls, are the ones who again, focus on  
17 the merits of our arguments and what we do. When I  
18 go in to lobby a Council Member, and colleagues like

19 myself go into lobby a Council Member, what we try  
20 to do is do the very best research, the very best  
21 analysis possible, and provide that to the Council  
22 Member, on which they can themselves, make reasoned,  
23 intelligent judgements, and rely upon the quality of  
24 the work that we're doing.

25 What is beautiful about the process,

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2 which is very similar to the litigation system in  
3 the law is, if you have two people on equal sides of  
4 the issue putting in the same effort, and the same  
5 quality, and presenting tremendous arguments and  
6 data, the City Council Member is empowered to make  
7 the most intelligent decision possible. Good  
8 lobbyists, and quite frankly, the smartest, the  
9 best, the brightest, and the most ethical lobbyists  
10 practice that way, and the reason they do is because  
11 they can. They have the ability to present that kind  
12 of information, and that's what we rely on.

13 There is, of course, another type of  
14 lobbyists. And it is the lobbyist into which the  
15 Jack Abranoffs of the world fall. And they're not  
16 all to the extent that Mr. Abramoff is, in terms of  
17 violating the law. But what they do, is they

18 attempt to influence the actions of the City  
19 Council, not based on the merits of their arguments,  
20 but instead, upon who they know, the money they  
21 have, and the connections that they have. This is  
22 the great perversion of lobbying.

23 And lobbyists who fall in the  
24 category that I do, which is to present meritorious  
25 arguments to the Council, want to see this Council

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2 do everything in its power to stop these people from  
3 abusing what lobbying is. And it is a helpful,  
4 integral part of government.

5 And so, I encourage the Council --  
6 and that's what I want to talk about today, in terms  
7 of what the Council can specifically do to close  
8 these loopholes.

9 CHAIRPERSON FELDER: Excuse me for a  
10 minute. In addition to whatever you said so far, I  
11 want you to limit your remarks to the bills. So if  
12 you have anything that you disagree with, or to add  
13 to the bills specifically, that we talked about,  
14 that's what we'd like to hear.

15 MR. MARLOW: Yes, Mr. Chairman. Well  
16 then let me go immediately to Intro. 190.  
17 Obviously, Intro. 190 is the bill that's focused on

18 greater enforcement of the present lobbying laws.  
19 And I think, as we all know, the failing in the  
20 lobbying laws comes not in lobbyists disobeying the  
21 laws, but in them finding the loopholes. To me the  
22 most obvious loophole that is brought up this  
23 evening, is by allowing lobbyists to engage in fund  
24 raising activities, as my own Council Member, David  
25 Yassky, said a little bit earlier on. But there has

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2 been much made about allowing lobbyists to be  
3 political consultants. That's a similar skill with  
4 which I personally don't have a problem. There's  
5 also political consultants being fund raisers.  
6 Which is also, I think, part and parcel, and that's  
7 okay. But when you have lobbyists people that  
8 participate as fund raisers, I think you get very,  
9 very close to the area of what could be a bribe,  
10 until the two areas, I think 190 should be amended  
11 to prohibit, is lobbyists from holding fund raising  
12 events of any kind, and lobbyists from participating  
13 in bundling. There are two important reforms that  
14 are holes that 190 fails to cover.

15 In terms of 191, I think the Council,  
16 and in particular, Council Member Vallone, has hit

17 upon the weakness in "gift". I would strongly  
18 encourage this Committee not to leave that decision  
19 up to legislative history. I think any lawyer, and  
20 certainly the Bar Association would tell you,  
21 legislative history is a very weak area on which to  
22 make a legal argument. It can certainly be cornered  
23 as the statement of one member, and not necessarily  
24 the opinion of the entire Council. I think it's  
25 incumbent upon this Committee, having identified

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2 this weakness, to identify the term "gift". What I  
3 would suggest, and I think your point as a fanatic  
4 of bagel and lochs, that your comments absolutely  
5 hit home with me, I think that be it \$15, \$20, or  
6 \$25 as a limit, per day, would eliminate a lot of  
7 that grey area that would create enormous  
8 enforcement obligations and costs, where you really  
9 don't need them.  
10                   It's also important when I say to  
11 have it done a day, as something we've learned up in  
12 Albany, you don't want a lobbyist taking out a  
13 Council Member and calling a \$20 appetizer, a \$20  
14 meal, a \$20 dessert three separate contributions.  
15 So I would personally suggest a limit of \$20 per  
16 day, from a lobbyist to a Council Member. I cannot,

17 in my mind, imagine a single Council Member being  
18 swayed by a \$20 gift, away from the needs of his  
19 constituents.

20 Finally, I want to talk about two  
21 other major loopholes that I think need to be  
22 closed. The first, which I deem to be probably the  
23 most egregious loophole, and I don't feel that the  
24 Council can make any strides towards lobbying reform  
25 unless it closes, is the practice of allowing close

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2 relatives of members of the Council to lobby the  
3 members. I do want to make one distinguishing  
4 point, which is not in my testimony, and I'm  
5 embarrassed to overlook it, and it actually involves  
6 Mr. Vallone. I think there should be an exception to  
7 that for people who were formerly members of the  
8 City Council, or elected officials, because clearly,  
9 their influence is not based upon their connection  
10 to a son or a daughter who is a member of the  
11 Council. But if you're going to prohibit direct  
12 bribes to elected officials, what sense does it make  
13 to allow them to give thousands of dollars a month  
14 to a close family member, and call it lobbying fees?  
15 It is one of those perfect loopholes that



16 lobbyists will take advantage of. And I think you  
17 can look through the registered lobbyists in New  
18 York, and Albany, and Washington, and see this occur  
19 time and time again. And to overlook it in favor of  
20 whether a gift be \$20 or \$50 to me, seems a little  
21 peculiar.

22 And I should certainly say that there  
23 should be no grandfathering. If something is wrong  
24 now, which it is, current people practicing it  
25 should not be given a free ride.

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2 And the other thing, I'll conclude on  
3 this, is that there has to be legislation along with  
4 these reforms that prohibits individuals from  
5 getting greater access to members of the Council  
6 than they would on the merits of their argument, by  
7 hiring former employees. I think that is another  
8 practice. I think the number one lobbyist in the  
9 entire State is a former employee of the Speaker. I  
10 think that this occurs throughout the City, and I  
11 think there should be a 30- month limitation. You  
12 must wait 30 months, two and a half years from when  
13 you leave government service, until you can come  
14 back and lobby a member.

15 And again, although this may not sit

16 well, it may not sit well with the Council to cut  
17 out their family members, and the Council to cut out  
18 their staff, serious lobbying reform requires tough  
19 decisions, and as a member of the lobbying industry  
20 who wants to clean up my industry, I am asking the  
21 Council for its help. Because without you, we  
22 cannot weed out the bad- doers who undermine my  
23 profession. I thank you for your time.

24 CHAIRPERSON FELDER: Thank you. Do  
25 you have any questions? I'm just curious. Does

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2 your firm spend any money on elected officials?

3 MR. MARLOW: As a policy, we do not.

4 No.

5 CHAIRPERSON FELDER: Do you spend any  
6 money on elected officials. Not as a policy.

7 MR. MARLOW: You mean donations?

8 CHAIRPERSON FELDER: Yes.

9 MR. MARLOW: No. We've never done it.

10 CHAIRPERSON FELDER: Your firm doesn't  
11 contribute.

12 MR. MARLOW: Never done it.

13 CHAIRPERSON FELDER: Do any of your  
14 relatives or lawyers' relatives?

15 MR. MARLOW: My mother lives in West  
16 Hampton, so no. My brothers, no.

17 CHAIRPERSON FELDER: I'm saying  
18 generally.

19 MR. MARLOW: No. I have no distant  
20 relatives --

21 CHAIRPERSON FELDER: You didn't hear  
22 what I said. I asked you whether you think it's  
23 possible that any of the lawyers at your firm, or  
24 any relatives, that contribute money to elected  
25 officials.

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2 MR. MARLOW: No. But we have a small  
3 firm. Your point is well taken, if it's a large  
4 firm.

5 CHAIRPERSON FELDER: Okay.

6 MR. MARLOW: But I think it's a little  
7 different. I'm not talking about -- I'm talking  
8 about the definition of lobbyist, allowing lobbyists  
9 at all to include someone who is paid to lobby a  
10 close relative in the Council, be it a brother,  
11 sister, father or daughter, uncle, aunt, a first-  
12 generation removed relative. I think that that's  
13 something you can easily find out, whether or not  
14 you know, the Councilwoman's brother, which I don't

15 believe she has one, she might, so I'm not referring  
16 to him, is actually lobbying the Council.

17 CHAIRPERSON FELDER: Which  
18 Councilwoman are you referring to?

19 MR. MARLOW: I'm sorry. My former  
20 Councilman, the Speaker, Christine Quinn. I don't  
21 know if she has a brother.

22 CHAIRPERSON FELDER: I know.

23 MR. MARLOW: But there are examples in  
24 this Council, of members who have family members,  
25 and I'm not talking about the former Speaker

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2 Vallone, who I think should be an exception, because  
3 he clearly has his own merits and skills, and he's  
4 not using his son in the Council right now to gain  
5 access. But there are other members who have  
6 brothers, sisters, fathers, uncles, who lobby them  
7 and I really think that that's a black eye on this  
8 Council and on my profession.

9 CHAIRPERSON FELDER: Well, in terms of  
10 the black eye, you know what? I thank you for your  
11 testimony.

12 MR. MARLOW: Okay. Thank you.

13 CHAIRPERSON FELDER: Okay? The

14 hearing is closed. And thank you for coming.

15 (Hearing concluded at 3:50 p.m.)

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CERTIFICATION

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5 STATE OF NEW YORK )

6 COUNTY OF NEW YORK )

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I, JOAN GARCIA, do hereby certify

10 that the foregoing is a true and accurate transcript

11 of the within proceeding.

12

I further certify that I am not

13 related to any of the parties to this action by

14 blood or marriage, and that I am in no way  
15 interested in the outcome of this matter.

16 IN WITNESS WHEREOF, I have hereunto  
17 set my hand this 4th day of April 2006.

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JOAN GARCIA

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C E R T I F I C A T I O N

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I, JOAN GARCIA, do hereby certify the  
10 aforesaid to be a true and accurate copy of the  
11 transcription of the audio tapes of this hearing.

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JOAN GARCIA

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Proposed Int. No. 192-A

By The Speaker (Council Member Quinn) and Council Members Arroyo, Avella, Brewer, Fidler, Garodnick, Gonzalez, James, Koppell, Lappin, Mark-Viverito, Martinez, McMahon, Nelson, Palma, Weprin, White Jr., Liu, Vacca and The Public Advocate (Ms. Gotbaum) (in conjunction with the Mayor)

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to campaign contributions by lobbyists.

Be it enacted by the Council as follows:

Section 1. Subdivision 3 of section 3-702 of the administrative code of the city of New York, as amended by local law number 58 for the year 2004, is amended, and new subdivisions 16 and 17 are added to such section to read as follows:

3. The term “matchable contribution” shall mean (i) a contribution, (ii) contributions or (iii) a portion of a contribution or contributions, not greater than the applicable contribution limitation set forth in paragraph (f) of subdivision one of section 3-703 for all covered elections held in the same calendar year, made by a natural person resident in the city of New York to a participating candidate which has been reported in full to the campaign finance board in accordance with subdivision six of section 3-703 by the candidate’s principal committee and has been contributed on or before December thirty-first in the year of such election that may be matched by public funds in accordance with the provisions of this chapter. Any contribution, contributions, or a portion of a contribution determined to be invalid for matching funds by the board may not be treated as a matchable contribution for any purpose. A loan may not be treated as a matchable contribution. The following contributions are not matchable:

(a) in-kind contributions of property, goods, or services;



(b) contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value;

(c) contributions in the form of the purchase price paid for or otherwise induced by a chance to participate in a raffle, lottery, or a similar drawing for valuable prizes;

(d) money order contributions from any one contributor that are, in the aggregate, greater than \$100;

(e) contributions from individuals under the age of eighteen years; [and]

(f) contributions from individual vendors to whom the participating candidate or his or her principal committee makes an expenditure, in furtherance of the nomination for election or election covered by the candidate's certification, unless such expenditure is reimbursing an advance; and

(g) contributions from lobbyists or other persons required to be included in a statement of registration filed pursuant to section 3-213(c)(1). The board shall rely on the database maintained by the city clerk pursuant to section 3-221 or such other information known to the board to determine whether a contribution is not matchable based on the contributor's status as a lobbyist or person required to be included in a statement of registration filed pursuant to section 3-213.

16. The term "lobbyist" shall mean a lobbyist as defined in subdivision (a) of section 3-211 of this title and the spouse or domestic partner and unemancipated children of the lobbyist, and if the lobbyist is an organization, the term "lobbyist" shall mean only that division of the organization that engages in lobbying activities and any officer or employee of such lobbyist who engages in lobbying activities of the organization or is employed in an organization's

division that engages in lobbying activities of the organization and the spouse or domestic partner and unemancipated children of such officers or employees.

17. The term "lobbying" or "lobbying activities" shall mean lobbying and lobbying activities as defined in section 3-211 of this title.

§2. If any provision of this local law, or any amendments thereto, shall be held invalid or ineffective in whole or in part or inapplicable to any person or situation, such holding shall not affect, impair or invalidate the remainder of this local law, and all other provisions thereof shall nevertheless be separately and fully effective and the application of any such provision to other persons or situations shall not be affected.

§3. This local law shall take effect immediately and shall be applicable to all public funds claims for elections held on or after the effective date, regardless of whether the claim for public funds was submitted prior to the effective date.

DJ  
5/16/06

DeNora M. Johnson  
Legislative Counsel

Sheila Horgan  
Legislative Policy Analyst



**THE COUNCIL**

**REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION**

Robert Newman, Legislative Director

**COMMITTEE ON GOVERNMENTAL OPERATIONS**

Simcha Felder, Chair

May 24, 2006

**PROPOSED**

**INT. NO. 190-A:**

By The Speaker (Council Member Quinn) and Council Members Arroyo, Avella, Brewer, Dickens, Fidler, Garodnick, Gonzalez, James, Koppell, Lappin, Mark-Viverito, Martinez, Nelson, Palma, Weprin, White Jr., Liu, Vacca and The Public Advocate (Ms. Gotbaum) (in conjunction with the Mayor)

**TITLE:**

A Local Law to amend the administrative code of the city of New York, in relation to the reporting of lobbyist activities and the enforcement of the lobbying law.

**PROPOSED**

**INT. NO. 191-A:**

By The Speaker (Council Member Quinn) and Council Members Arroyo, Avella, Brewer, Fidler, Garodnick, Gonzalez, James, Koppell, Lappin, Mark-Viverito, Martinez, Nelson, Palma, Weprin, White Jr., Liu, Vacca and The Public Advocate (Ms. Gotbaum) (in conjunction with the Mayor)

**TITLE:**

A Local Law to amend the administrative code of the city of New York and the New York city charter, in relation to gifts by lobbyists.

**PROPOSED**

**INT. NO. 192-A:**

By The Speaker (Council Member Quinn) and Council Members Arroyo, Avella, Brewer, Fidler, Garodnick, Gonzalez, James, Koppell, Lappin, Mark-Viverito, Martinez, McMahon, Nelson, Palma, Weprin, White Jr., Liu, Vacca and The Public Advocate (Ms. Gotbaum) (in conjunction with the Mayor)

**TITLE:**

A Local Law to amend the administrative code of the city of New York, in relation to campaign contributions by lobbyists.

## **I. Introduction**

On April 24, 2006, the Committee on Governmental Operations, chaired by Council Member Simcha Felder, will vote on Proposed Int. Nos. 190-A, 191-A and 192-A. Proposed Int. Nos. 190-A, 191-A and 192-A would make amendments to various sections of the New York city charter and the administrative code of the city of New York which would: (1) create a mandatory electronic filing system for lobbyists; (2) require full lobbyist disclosure of all fundraising and consulting activities; (3) strengthen enforcement and penalties for violations of the lobbying law; (4) ban all gifts from lobbyists to city officials; and (5) prevent lobbyists' contributions from being matched with public funds. The Committee held a hearing on a prior version of these bills on April 4, 2006.

## **II. Lobbying Reform Background**

Lobbying scandals on the federal and state level, such as the Jack Abramoff lobbying scandal in 2005 ("Abramoff scandal"), have reduced the public's trust in its elected officials. The Abramoff scandal involved allegations that lobbyists illegally gave federal legislators gifts and made campaign donations in return for votes or support of legislation.<sup>1</sup> While the legislators argued there was no undue influence as a result of these gifts, these accusations raised serious questions of impropriety.

With the Abramoff scandal as a backdrop, City Council Speaker Christine Quinn and Mayor Michael Bloomberg introduced legislation to reform the city's lobbying laws. The proposed reforms seek to reduce the impact of lobbying culture and special interests in City Hall and strengthen the integrity, transparency and accessibility of city government for its constituents.<sup>2</sup>

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<sup>1</sup>See [http://en.wikipedia.org/wiki/Abramoff-Reed\\_Indian\\_Gambling\\_Scandal](http://en.wikipedia.org/wiki/Abramoff-Reed_Indian_Gambling_Scandal)

<sup>2</sup> See Press Release, The Council of the City of New York, Office of Communications, Speaker Quinn & Mayor

### III. New York City Lobbying Laws

Under the current New York City lobbying laws, which are contained in subchapter 2 of chapter 2 of title 3 of the administrative code of the city of New York (“administrative code”), the city clerk is responsible for enforcing compliance with the requirements of the lobbying laws.<sup>3</sup> One of the city clerk’s responsibilities is to keep statements of registration filed annually by lobbyists open to public inspection for a period of five years.<sup>4</sup> The lobbyists’ annual statement of registration must include:

(1) the name, address and telephone number of the lobbyist; (2) the name, address and telephone number of the client by whom or on whose behalf the lobbyist is retained, employed or designated; (3) if such lobbyist is retained or employed pursuant to a written agreement of retainer or employment, a copy of such shall also be attached and if such retainer or employment is oral, a statement of the substance thereof; (4) a written authorization from the client by whom the lobbyist is authorized to lobby, unless such lobbyist has filed a written agreement of retainer or employment pursuant to paragraph three of this subdivision; (5) a description of the general subject or subjects on which the lobbyist is lobbying or expects to lobby; (6) the name of the person or agency before which the lobbyist is lobbying or expects to lobby; and (7) if the lobbyist has a financial interest in the client, direct or indirect, information as to the extent of such interest and the date on which it was acquired.<sup>5</sup>

Lobbyists are also required to report to the city clerk within thirty days after the lobbyist terminates the retainer, employment or designation for which a statement of registration was filed.<sup>6</sup>

Further, pursuant to administrative code section 3-216, if a lobbyist “in any lobbying year expends, receives or incurs combined reportable compensation and expenses in an amount in

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Bloomberg Introduce Lobbying Reforms; Speaker Presents Rules Changes Establishing Parameters for Lobbyists’ Access to Council Members (Feb.16, 2006) (available at: [http://www.nyccouncil.info/pdf\\_files/reports/02-16\\_06\\_loybbyrform.pdf](http://www.nyccouncil.info/pdf_files/reports/02-16_06_loybbyrform.pdf)); see also Press Release, Office of the Mayor, Mayor Bloomberg and Speaker Quinn Unveil Comprehensive and Groundbreaking Reform Package of Lobbying Reform (Feb. 16, 2006) (available at: <http://www.nyc.gov>).

<sup>3</sup> Administrative Code §3-212

<sup>4</sup> Administrative Code §3-213(a) & (b)

<sup>5</sup> Administrative Code §3-213(c)

<sup>6</sup> Administrative Code §3-215

excess of two thousand dollars”<sup>7</sup> then the lobbyist must file a first periodic report with the city clerk by “the fifteenth day next succeeding the end of the reporting period on which the cumulative total for such lobbying year equalled such sum.”<sup>8</sup> Additionally, any lobbyist that files a periodic report must subsequently file with the city clerk “a periodic report for each reporting period that such person expends, receives or incurs combined reportable compensation and expenses in an amount in excess of five hundred dollars for the purposes of lobbying during such reporting period.”<sup>9</sup> The periodic report must include:

(1) the name, address and telephone number of the lobbyist; (2) the name, address and telephone number of the client by whom or on whose behalf the lobbyist is retained, employed or designated; (3) a description of the general subject or subjects on which the lobbyist has lobbied; (4) the person or agency before which the lobbyist has lobbied; (5) (i) the compensation paid or owed to the lobbyist, and any expenses expended, received or incurred by the lobbyist for the purpose of lobbying. (ii) expenses required to be reported pursuant to subparagraph (i) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where such expense is more than seventy-five dollars on behalf of any one person, the name of such person shall be listed. (iii) for the purpose of this paragraph, expenses shall not include: (A) personal sustenance, lodging and travel disbursements of such lobbyist; (B) expenses, not in excess of five hundred dollars in any one calendar year, directly incurred for the printing or other means of reproduction or mailing of letters, memoranda or other written communications. (iv) expenses paid or incurred for salaries other than that of the lobbyist shall be listed in the aggregate. (v) expenses of more than fifty dollars shall be paid by check or substantiated by receipts.”<sup>10</sup>

The city clerk is required to keep the periodic reports on file and open to public inspection for five years.<sup>11</sup>

Under the lobbying laws, “every lobbyist required to file a statement of registration pursuant to section 3-213 of this subchapter or any client retaining, employing or designating a lobbyist or lobbyists, if during the year such client expended, received or incurred an amount in

<sup>7</sup> Administrative Code §3-216(a)(1)

<sup>8</sup> Administrative Code §3-216(a)(1)

<sup>9</sup> Administrative Code §3-216(a)(2)

<sup>10</sup> Administrative Code §3-216(a)(2)(b)

<sup>11</sup> Administrative Code §3-216(d)(2)

excess of two thousand dollars of combined reportable compensation or expenses, as provided in paragraph five of subdivision (c) of this section, for the purposes of lobbying,” is also required to file an annual report.<sup>12</sup> The annual report must be filed with the city clerk “by the fifteenth day of January next following the year for which such report is made and shall contain on an annual cumulative basis all the information required in periodic reports by section 3-216 of this subchapter.”<sup>13</sup> The annual report must contain the same information as contained in the periodic report.<sup>14</sup> Further, any statement or report that must be filed under subchapter 2 may be filed in person with the clerk or done by mail.<sup>15</sup>

Section 3-223 outlines the penalties for violation of subchapter 2.<sup>16</sup> First, a person or organization is guilty of a class A misdemeanor if he or she knowingly or willfully violates any provision of subchapter 2.<sup>17</sup> The person or organization will also be “subject to a civil penalty, in an amount not to exceed fifteen thousand dollars, to be assessed by the city clerk, or an order to cease all lobbying activities subject to the jurisdiction of the city clerk for a period of time as determined by said clerk not to exceed sixty days, or both such civil penalty and order.”<sup>18</sup> Second, if a person or organization “violates a cease and desist order of the city clerk issued under subdivision (a) or enters into a contingency agreement or accepts or pays any contingency fees as proscribed in section 3-218 of this subchapter, shall be guilty of a class A misdemeanor.”<sup>19</sup> Also, the person or organization could be subject to a civil penalty “in an amount not to exceed fifteen thousand dollars, to be assessed by the city clerk.”<sup>20</sup> Third, if a

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<sup>12</sup> Administrative Code §3-217(a)(1) & (2)

<sup>13</sup> Administrative Code §3-712(b)

<sup>14</sup> See supra footnote 8 and supporting text

<sup>15</sup> Administrative Code §3-221

<sup>16</sup> Administrative Code §3-223

<sup>17</sup> Administrative Code §3-223(a)

<sup>18</sup> Id.

<sup>19</sup> Administrative Code §3-223(b)

<sup>20</sup> Id.

person or organization fails to file a statement or report after notification by the city clerk it “shall constitute a class A misdemeanor.”<sup>21</sup> Additionally, the person or organization may be subject to a civil penalty of up to ten thousand dollars.<sup>22</sup> Fourth, if a person or organization violates any provision of subchapter 2 not punishable under subdivisions a, b, or c of section 3-223 then such person shall be subject to the imposition, by the city clerk, of a civil penalty of up to ten thousand dollars.<sup>23</sup> However, under section 3-223(e), the city clerk cannot assess any penalty for violation of subdivision a, b, c, or d until 14 days after written notice of the violation is given.<sup>24</sup>

#### **IV. New York City Conflict of Interest and Campaign Financing Laws**

Under New York city laws governing conflicts of interest, it is impermissible for a public servant to accept any “valuable gift, as defined by rule of the [Conflicts of Interest] board, from any person or firm which such public servant knows is or intends to become engaged in business dealings with the city, except that nothing contained herein shall prohibit a public servant from accepting a gift which is customary on family and social occasions.”<sup>25</sup> The Conflicts of Interest Board (“COIB”) has defined a “valuable gift” as “any gift to a public servant which has a value of \$50.00 or more, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form.”<sup>26</sup>

Under the New York City campaign finance act, a candidate may be eligible for optional public financing if they meet certain requirements.<sup>27</sup> Once the candidate for nomination for election or election has met the requirements contained in section 3-703 of the administrative

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<sup>21</sup> Administrative Code §3-223(c)

<sup>22</sup> Id.

<sup>23</sup> Administrative Code §3-223(d)

<sup>24</sup> Administrative Code §3-223(e)

<sup>25</sup> New York city charter §2604(b)(5)

<sup>26</sup> 53 RCNY § 1-01 (title 53 - rules of the city of new york §1-01).

<sup>27</sup> Administrative Code §3-703



code, the next inquiry is whether the contribution received can be matched under the program with public funds.<sup>28</sup> In order to obtain campaign finance matching funds, a gift must be matchable.<sup>29</sup> Under the administrative code, loans and the following contributions are not matchable:

(a) in-kind contributions of property, goods, or services; (b) contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value; (c) contributions in the form of the purchase price paid for or otherwise induced by a chance to participate in a raffle, lottery, or a similar drawing for valuable prizes; (d) money order contributions from any one contributor that are, in the aggregate, greater than \$100; and (e) contributions from individuals under the age of eighteen years.<sup>30</sup>

Under the campaign financing program, each participating, limited participating, or non-participating candidate and his or her principal committee must complete a disclosure report about all “contribution, loan, guarantee, or other security for such loan received by the candidate and such committee...”<sup>31</sup> Finally, the campaign finance board has responsibility for promulgating rules and regulations and providing necessary forms to implement the program.<sup>32</sup>

## **V. Provisions of Proposed Int. No. 190-A**

Proposed Int. No. 190-A would make various structural and procedural changes to the city’s lobbying laws, which if implemented would among other things: (1) create a stronger enforcement mechanism with the Office of the City Clerk (“Clerk”), (2) broaden lobbyists’ disclosure requirements and (3) create a commission to review the law’s efficacy and to make recommendations on ways to strengthen or improve the law.

The Clerk currently has authority to administer and enforce the lobbying laws, however, the Clerk has not effectively enforced the lobbying laws. Instead the Clerk’s office has served as a

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<sup>28</sup> Administrative Code §3-702(3)

<sup>29</sup> Id.

<sup>30</sup> Id.

<sup>31</sup> Administrative Code §3-703(a)

<sup>32</sup> Administrative Code §3-708(8)

mere storehouse for lobbyist information. Proposed Int. No. 190-A seeks to redress this problem by enhancing the enforcement powers of the Clerk's office by equipping the Clerk's office with in-house investigators, trained by the Department of Investigation ("DOI"). Under the proposed bill, the investigators at the clerk's office would not only be responsible for reviewing all of the lobbyists' filings currently required by the lobbying law, i.e., statements of registration, periodic reports, and annual reports, but would also be responsible for conducting random audits of these statements and reports.

Proposed Int. No. 190-A further enhances the Clerk's enforcement powers by increasing the fines applicable for violation of the lobbying laws. The proposed bill would increase the penalty for willful violations of the lobbying laws or violations of a Clerk's order to cease and desist from fifteen thousand dollars to thirty thousand dollars. Further, if a lobbyist does not timely file a statement or report required under the law, in addition to the criminal penalties that may be assessed, the lobbyist would be subject to daily penalties for the first fourteen days of delinquency. The Clerk would conform, by rule, the amount of the daily penalties to the fees assessed by the New York Temporary State Commission. Under the current lobbying law, the Clerk may also assess civil penalties against a lobbyist that fails to file any statement or report.<sup>33</sup> Proposed Int. No. 190-A would increase the civil penalty for failure to submit statements or reports, as well as for violations that do not fit within the aforementioned categories, from the current maximum fine of ten thousand dollars to a maximum fine of twenty thousand dollars.

Proposed Int. No. 190-A would also substantially increase the Clerk's public reporting requirements. Specifically, the City Clerk would be required to post annually on the internet a report detailing the number of complaints received from the public and the disposition of such complaints, the number and amount of civil penalties imposed, the number and duration of

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<sup>33</sup> See *supra* notes 22, 23 and 24, and accompanying text.

orders issued, the number of random audits conducted by the clerk and outcomes of the audits, and compliance programs developed and implemented for lobbyists by the Clerk. In addition, each time an order or civil penalty is issued, the Clerk would be required to post information on the internet identifying the lobbyist or client who committed the violation, the specific provision of law violated and the duration of the order or amount of the penalty. Further, the proposed bill would also increase the public's access to lobbying information by requiring that all statements and reports required to be filed by lobbyists with the Clerk be filed electronically and placed on the internet by the Clerk in a timely manner. These activities will accomplish the goals of the Speaker and the Mayor in proposing these reforms by making lobbying activity in City Hall more transparent.

**A. Amendments to Reporting Requirements**

Proposed Int. No. 190-A would require lobbyists to include their name, address and telephone number and the names, addresses and telephone numbers of their spouse or domestic partner and unemancipated children, if the lobbyist is an individual, in their statement of registration. In addition, if the entire entity is a lobbying business such as a lobbying firm, then it would be required to include the names, addresses and telephone numbers of all of its officers and employees. Finally, if an organization has a government affairs or lobbying division, the statement of registration would have to include the names of the employees or members of that division of the organization. Spouses and domestic partners as well as unemancipated children of such officers and employees required to be listed in the statement of registration must also be provided.

Under the current lobbying laws, lobbyists are required to disclose information regarding the subjects they lobby or expect to lobby in their periodic and annual reports. In practice,

however, lobbyists do not comply with this requirement and most provide generic responses, such as lobbied about “public policy.” Proposed Int. No. 190-A attempts to deter this practice by expanding lobbyists’ disclosure requirements and making the reporting requirements much more specific. In particular, under the proposed bill, lobbyists would be required to “include additional information to identify the local law or resolution, procurement, real property, rule, rate making proceeding, determination of a board or commission, or other matter on which the lobbyist is lobbying or expects to lobby.”

The proposed bill would also create a new reporting requirement for lobbyists to cover instances where a lobbyist acts in the dual capacities of lobbyist as well as fundraiser and/or political consultant for a candidate. Proposed Int. No. 190-A would require that “any lobbyist required to file a statement of registration pursuant to section 3-213 of this subchapter who in any calendar year to which the statement of registration relates, or in the six months preceding such calendar year, engages in fundraising or political consulting activities shall file with the city clerk, on forms supplied by the city clerk, a fundraising and/or political consulting report.” The lobbyist would file the fundraising and/or political consulting reports on the same period schedule as the periodic reports are filed, except that the “first fundraising and/or political consulting report filed in any calendar year shall include information on fundraising and/or political consulting activities that occurred in any period beginning six months preceding the calendar year to which the statement of registration relates through the end of the reporting period for which the report is filed, to the extent such information has not been reported in a fundraising and/or political consulting report filed in the preceding calendar year. Each subsequent fundraising and/or political consulting report filed in or with respect to the calendar year to which the statement of registration relates shall include information on fundraising and/or

political consulting activities that occurred since the end of the reporting period for which the previous report was filed through the end of the reporting period for which the current report is filed.” The fundraising and/or political consulting activities must be reported, “whether they are conducted directly by the lobbyist, or through any other entity of which such lobbyist is a principal.”

The intent of this provision is to ensure that lobbyists who are paid by candidates or on behalf of candidates by their campaign committees must report their dual roles. Employees of good government or other organizations who lobby and may provide political advice to candidates, but are paid by their employer, would not be required to make this filing.

The fundraising and/or political consulting report would contain the following information:

(1) the name, address and telephone number of the lobbyist and the individuals employed by the lobbyist engaged in such fundraising and/or political consulting activities; (2) the name, address and telephone number of the candidate, public servant, or elected official to whom or on whose behalf the lobbyist provided fundraising and/or political consulting services; (3) (i) the compensation paid or owed to the lobbyist for such fundraising and/or political consulting activities, and any expenses expended, received or incurred by the lobbyist for the purpose of providing fundraising and/or political consulting services; (ii) Expenses required to be reported pursuant to subparagraph (i) of this paragraph shall be listed in the aggregate if seventy-five dollars or less and if more than seventy-five dollars such expenses shall be detailed as to amount, to whom paid, and for what purpose; and where such expense is more than seventy-five dollars on behalf of any one person, the name of such person shall be listed; and (4) in the case of fundraising activities, the total dollar amount raised for each candidate for which such activities were performed.

Finally, the Clerk would be required to keep all fundraising and/or political consulting reports available in electronic form for inspection by the public.

In order to ensure that the city’s lobbying reporting process is as streamlined as possible, the proposed bill would require the Clerk to adopt rules to conform the reporting periods and

reporting forms, to the extent practicable, to those used by the New York Temporary State Lobbying Commission.

### **B. Implementation Commission**

Finally, to ensure compliance with the reforms in the legislation, the proposed bill would require the mayor and the city council to jointly appoint a five-member commission, within twenty-four months of the enactment of Proposed Int. No. 190-A, to review whether the legislation has been effectively implemented. Within six months of the commission's appointment, the commission would be required to give a report to the mayor and city council about its administrative and legislative recommendations for strengthening the administration and enforcement of the law and whether the commission would recommend raising the dollar threshold for the filing of a statement of registration.

Proposed Int. No. 190-A would become effective in two stages. The provisions contained in sections three, nine, ten, eleven, thirteen and fourteen of the law would become effective one year after the law is enacted and the remaining sections would become effective on the one hundred eightieth day after the law's enactment. The bifurcated enactment clause provides for additional time (one year) to the Clerk and other agencies to implement the provisions of the proposed bill that deal with the creation of electronic systems. The increased penalties, additional dual-role reporting by lobbyists and more specific reporting requirements would take effect six months after the law's effective date.

## **VI. Provisions of Proposed Int. No. 191-A**

Proposed Int. No. 191-A adds a new subchapter 3 to chapter 2 of title 3 of the administrative code, which would prohibits gifts by lobbyists to public servants.

Section one of the bill, which creates a new section 3-225 of the administrative code, prohibits lobbyists from offering or giving a gift to any public servant. Unlike the current Conflicts of Interest provisions which prohibit public servants from accepting “valuable gift[s]” defined as “any gift to a public servant which has a value of \$50.00 or more...” Int. No. 191-A’s ban on gifts from lobbyists applies only to the lobbyist.

Further, section one of the bill, which creates a section 3-228 of administrative code, authorizes COIB to consult with the Clerk to promulgate rules to ensure that the law is implemented, “including rules defining prohibited gifts, and exceptions to the prohibition on offering and receiving gifts...which to the extent practicable, shall be promulgated by COIB in a manner consistent with its rules and advisory opinions governing receipt of valuable gifts by public servants.” The introduced version of the bill was amended to give further parameters to COIB about exceptions to the lobbyist gift-giving ban. This is done for “*de minimis* gifts,” such as pens, mugs and t-shirts, gifts from family members and close personal friends on family or social occasions,<sup>34</sup> and those items such as invitations to events that are currently considered by the COIB to be gifts to the City that a public servant may accept in his or her official capacity.

COIB would be responsible for receiving, investigating and adjudicating any alleged violations of these new provisions, as well as all existing provisions, and they will do so in the same manner as they currently investigate and adjudicate conflicts of interest pursuant to section sixty-eight and thirty-four of the charter. In the event that COIB finds a violation of these provisions, if the person or organization knowingly and willfully violated the provisions they “shall be guilty of a class A misdemeanor. In addition to such criminal penalties, said person or

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<sup>34</sup> Id.

organization shall be subject to a civil penalty, in an amount not to exceed thirty thousand dollars.”

Proposed Int. No. 191-A would become effective “on the one hundred eightieth day after it shall have become a law provided that, upon enactment of this local law, the relevant city agencies shall take all necessary steps, including but not limited to the promulgation of forms and rules, to ensure the prompt implementation of this local law upon its effective date.”

## **VII. Provisions of Proposed Int. No. 192-A**

Proposed Int. No. 192-A amends the administrative code to strengthen the campaign finance system by prohibiting voluntary participants in the campaign finance program from receiving public matching funds for contributions by lobbyists and their spouses, domestic partners and unemancipated children. Proposed Int. No. 192-A was amended to remove the onus from the candidate to determine if a contributor was a lobbyist and therefore the contribution could not be submitted to the CFB for public matching funds. Under the amended legislation, the CFB is responsible for determining the matchability of lobbyist’s contributions – the candidate is not.

Proposed Int. No. 192-A shifts the responsibility for determining whether a contribution is from a lobbyist and therefore not matchable to the CFB. In determining whether a contribution is not matchable based on the contributor’s status as a lobbyist or person required to be included in a statement of registration filed pursuant to section 3-213 of the administrative code (or a spouse, domestic partner or unemancipated child of such person), the CFB shall “rely on the database maintained by the city clerk pursuant to section 3-221 or such other information known to the board.” Pursuant to Proposed Int. No. 190-A, a lobbyist would be required to include their name, address and telephone number, if the lobbyist is an individual, as well as the



name, address and telephone number of their spouse or domestic partner and unemancipated children in their statement of registration. The address and telephone numbers of spouses, domestic partners and unemancipated children would not be made available to the public. Further, if the lobbyist is an organization, the lobbyist must include “the names, addresses and telephone numbers of any officer or employee of such lobbyist who engages in any lobbying activities or who is employed in an organization’s division that engages in lobbying activities of the organization and the spouse or domestic partner and unemancipated children of such officers or employees,” in their statement of registration. When the statement of registration is electronically submitted to the Clerk’s office and the Clerk’s database is operational, the CFB will access the Clerk’s database for purposes of determining if a contribution is not matchable because the contribution was from a lobbyist.

Proposed Int. No. 192-A would become effective immediately and would be applicable to all public funds claims for elections held after the effective date. Although the CFB would rely on the database created by the Clerk’s office to determine if a contribution is not matchable, by making the law effective immediately, it ensures that all lobbyist contributions submitted to the CFB before the next election are still considered not matchable under the law.

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2 CITY COUNCIL

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CITY OF NEW YORK

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THE TRANSCRIPT OF THE MINUTES

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of the

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COMMITTEE ON GOVERNMENTAL  
OPERATIONS

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May 24, 2006

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Start: 10:00 a.m.

Recess: 10:25 a.m.

12

City Hall

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Council Chambers

New York, New York

14

15

B E F O R E:

16

SIMCHA FELDER

Chairperson,

17

18

COUNCIL MEMBERS: Joseph Addabbo

Larry Seabrook

19

Peter Vallone, Jr.

Inez Dickens

20

21

22

23

24

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25

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(800) 756-3410

1 COMMITTEE ON GOVERNMENTAL OPERATIONS

2 CHAIRPERSON FELDER: Good morning, and  
3 welcome to the hearing on the Committee on  
4 Governmental Operations. I am Simcha Felder, Chair  
5 of the Committee, and I am joined by my colleagues,  
6 Council Member Dickens, Councilman Addabbo,  
7 Councilman Seabrook and Councilman Vallone.

8 Today the Committee will vote on  
9 proposed Intro. No. 190-A and proposed Intro. 191-A  
10 and proposed Intro. No. 192-A, which make up the  
11 comprehensive lobbying reform plan proposed by the  
12 Speaker in conjunction with the Mayor.

13 The Committee held a hearing on a  
14 prior version of these bills April 4th, 2006. I'd  
15 like to thank the Administration, City agency  
16 advocacy groups and other interested parties  
17 regarding the testimony at the hearing.

18 Briefly, very briefly, the proposed  
19 bills would strengthen the mechanism for monitoring  
20 and enforcing compliance for the City's lobbying  
21 laws, increase lobbyists' reporting requirements  
22 under the law, prohibit gifts by lobbyists-- I'm  
23 trying, honest -- to City officials, and prohibit  
24 voluntary participants of the Campaign Finance  
25 Program from receiving public matching funds for

1 COMMITTEE ON GOVERNMENTAL OPERATIONS

2 contributions made by a lobbyist or other parties  
3 required to be included in a lobbyist statement of  
4 registration.

5 Again, I'd like to applaud the  
6 Speaker and the Mayor for their joint efforts, and  
7 hope the legislation will inherit a new level of  
8 transparency and efficiency within City government.  
9 The amendments to this legislation have clarified --  
10 I want to let her vote. It's not right.

11 We will be voting on three items  
12 today, Intros No. 190-A, 191-A and 192-A in one  
13 vote, similar to the vote at the Stated Meetings.

14 I will finish my comprehensive  
15 statement that was prepared by the most wonderful  
16 Counsel in the Council, DeNora Johnson, but first as  
17 a matter of courtesy to Council Member Dickens, who  
18 has her own Committee to start, we will allow her to  
19 vote at this point.

20 COUNCIL MEMBER DICKENS: Thank you so  
21 much, Mr. Chair. And aye on all.

22 CHAIRPERSON FELDER: Is there anyone  
23 else? Okay, so I'll finish this.

24 The amendments to the legislation  
25 have clarified issues raised at the previous hearing

1 COMMITTEE ON GOVERNMENTAL OPERATIONS

2 by my colleagues and witnesses. Specifically with  
3 respect to the intent of the lobbyist gift ban, and  
4 proposed 191 and the matching contribution provision  
5 contained in proposed in Intro. No. 192-A. At the  
6 present moment, a just wonderful all-around guy,  
7 right? Andy Grossman. Did I say it right? A  
8 wonderful all-around guy, is handing out the fiscal  
9 impact statement, which shows that there is  
10 absolutely no cost to the City. Believe it or not.  
11 That's not true. 192-A has a \$500,000 savings.  
12 That's what we like doing in this Committee, saving  
13 the City money.

14 In addition, the bill was thoroughly  
15 analyzed in comparison with the recent guidelines  
16 issued by the New York Temporary State Lobbying  
17 Commission, to ensure that the bill was in sync with  
18 the State rules.

19 For further clarification of the  
20 substantive changes to the bill, I refer you to  
21 consult the briefing report prepared by the Counsel  
22 to the Committee. All of my colleagues should have  
23 received a copy of the Fiscal Impact Statements,  
24 diligently prepared by the Finance Division for each  
25 of the three bills.

1 COMMITTEE ON GOVERNMENTAL OPERATIONS

2 I have been informed that fiscal  
3 impact for proposed Intros No. 190, 191-A, are  
4 negligible, but 192-A is not negligible at all,  
5 since we're going to be saving \$500,000 that should  
6 be used to increase the salaries of Council members.  
7 However, if you need more specific details, I would  
8 suggest that you consult the fiscal impact  
9 statements.

10 Finally, for purpose of the vote  
11 today, we will couple the vote on proposed Intros  
12 190-A, 191-A, 192-A in one vote, similar to the vote  
13 at the Stated Meeting.

14 With that said, the Counsel to this  
15 Committee, DeNora Johnson, who has done a wonderful  
16 job all the time, I can't say enough, even though  
17 some of my colleagues do not like me praising the  
18 counsel, has to read something into the record.

19 MS. JOHNSON: I'm going to read into  
20 the record a letter that was sent to the Chair of  
21 the Committee Simcha Felder from the Campaign  
22 Finance Board in regards to Intro. 192-A.

23 Dear Chairman Felder, I am writing to  
24 express the Campaign Finance Board's appreciation  
25 for the Council's revisions and clarifications of

1 COMMITTEE ON GOVERNMENTAL OPERATIONS

2 Intro. 192-A in response to testimony offered on  
3 April 4th, 2006. We believe these revisions  
4 significantly strengthen the legislation.

5 As I stated on behalf of the Board in  
6 that testimony, the original version of Intro. 192  
7 would have required all candidates to ask all  
8 contributors whether they were registered lobbyists,  
9 and we believe would have added to a candidate's  
10 compliance burden unnecessarily.

11 It was the Board's view that the  
12 burden should not be placed on candidates to collect  
13 or report to the Board whether their contributors  
14 are registered lobbyists, and the Board applauds the  
15 changes in the final version of this legislation,  
16 which will increase the public disclosure regarding  
17 the sources of Campaign contributions and permit  
18 implementation of the law's new restrictions without  
19 burdening candidates with additional compliance  
20 requirements.

21 The Board will be using the  
22 electronic database to be established by the City  
23 Clerk to enforce the legislation and to ensure that  
24 contributions from registered lobbyists to

25 participants in the Campaign Finance Program are not

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1 COMMITTEE ON GOVERNMENTAL OPERATIONS

2 matched with public funds, as directed in the  
3 legislation.

4 The benefit of the revised  
5 legislation is that it creates an enforcement  
6 mechanism that will not require candidates to  
7 collect or report additional information to the  
8 Board in their disclosure statements and/or C-Smart  
9 reporting.

10 The Board would be pleased to provide  
11 any further assistance on this matter, if the  
12 Council would find this helpful.

13 Sincerely, Nicole A. Gordon.

14 CHAIRPERSON FELDER: Thank you very  
15 much.

16 Do any of my colleagues have any  
17 questions before we vote? Seeing none, let's call  
18 the vote on this, please.

19 MS. JOHNSON: Felder.

20 CHAIRPERSON FELDER: Yes.

21 MS. JOHNSON: Addabbo.

22 COUNCIL MEMBER ADDABBO: Mr. Chair,  
23 may I have a moment to explain my vote?

24 CHAIRPERSON FELDER: More than that.



25 COUNCIL MEMBER ADDABBO: Actually,

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1 COMMITTEE ON GOVERNMENTAL OPERATIONS

2 shorter than you, though.

3 CHAIRPERSON FELDER: No, more than  
4 that.

5 COUNCIL MEMBER ADDABBO: I'm good.

6 Mr. Chair, thank you very much. And I  
7 do want to commend the staff for, again, doing these  
8 three intros and the time they have put into this  
9 issue. I believe that a good working relationship  
10 between the City Council and lobbyists have been  
11 proven to be beneficial to the City residents, so we  
12 do have some good work relationships, but there are  
13 issues, I am sure.

14 While I do vote yes for all three  
15 intros, I do have concerns regarding definitions of  
16 certain words and the control that the City Council  
17 has with this legislation and with this issue, and I  
18 like the fact that the City Council does have  
19 control and hopefully retains that control.

20 So, again, while I do vote yes for  
21 all three, I'd like to state for the record my  
22 concerns and, again, hopefully reevaluate these  
23 pieces of legislation in the future.

24 Thank you very much.

25 CHAIRPERSON FELDER: Thank you.

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1 COMMITTEE ON GOVERNMENTAL OPERATIONS

2 MS. JOHNSON: Dilan.

3 (No response.)

4 MS. JOHNSON: Recchia.

5 (No response.)

6 MS. JOHNSON: Seabrook.

7 COUNCIL MEMBER SEABROOK: Mr.

8 Chairman, the opportunity to explain my vote?

9 CHAIRPERSON FELDER: I'm sorry. Yes.

10 COUNCIL MEMBER SEABROOK: Great.

11 After looking at some of the changes

12 that have actually taken place within the bill --

13 CHAIRPERSON FELDER: Yes, the Counsel

14 said, you're allowed to speak.

15 COUNCIL MEMBER SEABROOK: Okay, thank

16 you very much.

17 CHAIRPERSON FELDER: She's not telling

18 you what to say.

19 COUNCIL MEMBER SEABROOK: Okay. Thank

20 you very much, Mr. Chairman.

21 After careful consideration and

22 looking at the changes that have taken place, in

23 particular that over-burden that would have allowed

24 candidates to have the responsibility of the  
25 reporting, therefore, I vote aye on all and would

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1 COMMITTEE ON GOVERNMENTAL OPERATIONS

2 like to be placed on the bill, all of the bills  
3 that's there.

4 CHAIRPERSON FELDER: Thank you.

5 COUNCIL CLERK: Vallone.

6 COUNCIL MEMBER VALLONE: May I also  
7 have a chance to explain my vote?

8 CHAIRPERSON FELDER: Absolutely.

9 COUNCIL MEMBER VALLONE: I would like  
10 to be associated with the remarks of Council Member  
11 Addabbo, so as not to repeat myself.

12 I also had many concerns about this  
13 bill, "had" many concerns, which were addressed by  
14 the Chair and the staff and taken care of, and I  
15 would like to thank them for the hard work involved  
16 here. The first version of this bill I think would  
17 have prevented my father from giving me a birthday  
18 present, which obviously I don't think was the  
19 intent here. Maybe it was, I don't know, but thanks  
20 for taking care of that.

21 But, again, many of my concerns have  
22 been taken care of. I still have some initial

23 concerns, as Joe Addabbo said, but I think overall  
24 this is a good bill, and I'm pleased to vote aye.

25 CHAIRPERSON FELDER: Thank you.

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1 COMMITTEE ON GOVERNMENTAL OPERATIONS

2 We're going to vote again because the  
3 clerk has to record the votes, right? So, I just  
4 want to say that I agree with the comments that were  
5 made, as well. I think they're very, very important.  
6 And some of the changes that were made, as a direct  
7 result of the input of Council members, have  
8 improved this bill dramatically. Although it's not  
9 perfect, I think we will revisit it in the near  
10 future to see what can be done to improve it  
11 further.

12 So, we're going to vote again, ready?  
13 Or I should say we're going to vote.

14 COUNCIL CLERK: Felder.

15 CHAIRPERSON FELDER: Aye.

16 COUNCIL CLERK: Addabbo.

17 COUNCIL MEMBER ADDABBO: Aye.

18 COUNCIL CLERK: Seabrook.

19 COUNCIL MEMBER SEABROOK: Aye on all.

20 COUNCIL CLERK: Vallone.

21 COUNCIL MEMBER VALLONE: Aye.

22 COUNCIL CLERK: By a vote of five in

23 the affirmative, no negative and no abstentions, the  
24 items are adopted.

25 Please sign the reports.

12

1 COMMITTEE ON GOVERNMENTAL OPERATIONS

2 CHAIRPERSON FELDER: Thank you very  
3 much. That concludes today's meeting, and I  
4 appreciate very much members being here on time. So,  
5 thank you very much for coming on time.

6 (Hearing concluded at 10:25 a.m.)

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CERTIFICATION

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STATE OF NEW YORK )

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COUNTY OF NEW YORK )

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I, CINDY MILLELOT, a Certified

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Shorthand Reporter, do hereby certify that the

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foregoing is a true and accurate transcript of the

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within proceeding.

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I further certify that I am not

14

related to any of the parties to this action by

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blood or marriage, and that I am in no way

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interested in the outcome of this matter.

17

IN WITNESS WHEREOF, I have hereunto

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set my hand this 24th day of May 2006.

19

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CINDY MILLELOT, CSR.

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C E R T I F I C A T I O N

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I, CINDY MILLELOT, a Certified Shorthand  
Reporter and a Notary Public in and for the State of  
New York, do hereby certify the aforesaid to be a  
true and accurate copy of the transcription of the  
audio tapes of this hearing.

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CINDY MILLELOT, CSR.

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THE TRANSCRIPT OF THE MINUTES

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of the

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STATED COUNCIL MEETING

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May 24, 2006

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Start: 2:34 p.m.

12

Recess: 5:15 p.m.

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City Hall

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Council Chambers

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New York, New York

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B E F O R E:

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BETSY GOTBAUM

18

Public Advocate

19

COUNCIL MEMBERS: Speaker Christine Quinn

20

Joseph Addabbo

21

Maria Arroyo

22

Tony Avella

23

Maria Baez

24

Charles Barron

25

Gale Brewer

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1

2 A P P E A R A N C E S (CONTINUED)

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COUNCIL MEMBERS:

4

Bill DeBlasio

Inez Dickens

5

Erik Martin-Dilan

Simcha Felder

6

Lewis Fidler

Helen Foster

7

Daniel Garodnick

James Gennaro

8

Vincent Gentile

Alan Gerson

9

Eric Gioia

Sara Gonzalez

10

Robert Jackson

Letitia James

11

Melinda Katz

G. Oliver Koppell

12

Andrew Lanza

Jessica Lappin

13

John Liu

Michael McMahon

14

Darlene Mealy

Rosie Mendez

15

Hiram Monserrate

Michael Nelson

16

James Oddo

Annabel Palma

17

Domenic Recchia

Diana Reyna

18

Joel Rivera

James Sanders

19

Larry Seabrook

Helen Sears

20

Kendall Stewart

James Vacca

21

Peter Vallone, Jr.

Albert Vann

22

Melissa Mark Viverito

David Weprin

23

Thomas White

David Yassky

24

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21 PUBLIC ADVOCATE GOTBAUM: Meeting of  
22 May 24th will finally come to order.  
23 All rise.  
24 Pledge of Allegiance.  
25 (Pledge of Allegiance.)

15

1 STATED COUNCIL MEETING  
2 PUBLIC ADVOCATE GOTBAUM: Roll call.  
3 CITY CLERK: Addabbo.  
4 COUNCIL MEMBER ADDABBO: Here.  
5 CITY CLERK: Arroyo.  
6 COUNCIL MEMBER ARROYO: Here.  
7 CITY CLERK: Avella.  
8 COUNCIL MEMBER AVELLA: Here.  
9 CITY CLERK: Baez.  
10 COUNCIL MEMBER BAEZ: Here.  
11 CITY CLERK: Barron.  
12 COUNCIL MEMBER BARRON: Here.  
13 CITY CLERK: Brewer.  
14 COUNCIL MEMBER BREWER: Here.  
15 CITY CLERK: Clarke.  
16 COUNCIL MEMBER CLARKE: Here.  
17 CITY CLERK: Comrie.  
18 COUNCIL MEMBER COMRIE: Here.  
19 CITY CLERK: DeBlasio.  
20 COUNCIL MEMBER DEBLASIO: Here.

21 CITY CLERK: Dickens.  
22 COUNCIL MEMBER DICKENS: Here.  
23 CITY CLERK: Dilan.  
24 COUNCIL MEMBER DILAN: Here.  
25 CITY CLERK: Felder.

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1 STATED COUNCIL MEETING  
2 COUNCIL MEMBER FELDER: Here.  
3 CITY CLERK: Fidler.  
4 COUNCIL MEMBER FIDLER: Here.  
5 CITY CLERK: Foster.  
6 COUNCIL MEMBER FOSTER: Here.  
7 CITY CLERK: Gallagher.  
8 (No response.)  
9 CITY CLERK: Garodnick.  
10 COUNCIL MEMBER GARODNICK: Here.  
11 CITY CLERK: Gennaro.  
12 COUNCIL MEMBER GENNARO: Here.  
13 CITY CLERK: Gentile.  
14 COUNCIL MEMBER GENTILE: Here.  
15 CITY CLERK: Gerson.  
16 COUNCIL MEMBER GERSON: Here.  
17 CITY CLERK: Gioia.  
18 COUNCIL MEMBER GIOIA: Here.  
19 CITY CLERK: Gonzalez.

20 COUNCIL MEMBER GONZALEZ: Here.  
21 CITY CLERK: Jackson.  
22 COUNCIL MEMBER JACKSON: Here.  
23 COUNCIL CLERK: James.  
24 COUNCIL MEMBER JAMES: Here.  
25 CITY CLERK: Katz.

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1 STATED COUNCIL MEETING  
2 COUNCIL MEMBER KATZ: Here.  
3 CITY CLERK: Koppell.  
4 COUNCIL MEMBER KOPPELL: Here.  
5 CITY CLERK: Lanza.  
6 COUNCIL MEMBER LANZA: Here.  
7 CITY CLERK: Lappin.  
8 COUNCIL MEMBER LAPPIN: Here.  
9 CITY CLERK: Liu.  
10 COUNCIL MEMBER LIU: Here.  
11 CITY CLERK: Mark Viverito.  
12 COUNCIL MEMBER MARK VIVERITO: Here.  
13 CITY CLERK: Martinez.  
14 (No response.)  
15 CITY CLERK: McMahon.  
16 COUNCIL MEMBER McMAHON: Here.  
17 CITY CLERK: Mealy.  
18 (No response.)  
19 CITY CLERK: Mendez.

20 COUNCIL MEMBER MENDEZ: Here.  
21 CITY CLERK: Monserrate.  
22 COUNCIL MEMBER MONSERRATE: Here.  
23 CITY CLERK: Nelson.  
24 COUNCIL MEMBER NELSON: Here.  
25 COUNCIL CLERK: Palma.

18

1 STATED COUNCIL MEETING  
2 COUNCIL MEMBER PALMA: Here.  
3 CITY CLERK: Recchia.  
4 COUNCIL MEMBER RECCHIA: Here.  
5 CITY CLERK: Reyna.  
6 COUNCIL MEMBER REYNA: Here.  
7 CITY CLERK: Sanders.  
8 COUNCIL MEMBER SANDERS: Here.  
9 CITY CLERK: Seabrook.  
10 COUNCIL MEMBER SEABROOK: Here.  
11 CITY CLERK: Sears.  
12 COUNCIL MEMBER SEARS: Here.  
13 CITY CLERK: Stewart.  
14 COUNCIL MEMBER STEWART: Here.  
15 CITY CLERK: Vacca.  
16 COUNCIL MEMBER VACCA: Here.  
17 CITY CLERK: Vallone.  
18 COUNCIL MEMBER VALLONE: Here.

19 CITY CLERK: Vann.  
20 COUNCIL MEMBER VANN: Here.  
21 CITY CLERK: Weprin.  
22 COUNCIL MEMBER WEPRIN: Here.  
23 CITY CLERK: White.  
24 COUNCIL MEMBER WHITE: Here.  
25 CITY CLERK: Yassky.

19

1 STATED COUNCIL MEETING  
2 COUNCIL MEMBER YASSKY: Here.  
3 CITY CLERK: Lanza.  
4 COUNCIL MEMBER LANZA: Here.  
5 CITY CLERK:: Oddo.  
6 COUNCIL MEMBER ODDO: Here.  
7 CITY CLERK: Rivera.  
8 COUNCIL MEMBER RIVERA: Here.  
9 CITY CLERK: Speaker Quinn.  
10 SPEAKER QUINN: Here.  
11 PUBLIC ADVOCATE GOTBAUM: The  
12 invocation will be read by the clerk, since Rabbi  
13 Glass had to leave. He left his invocation.  
14 All rise, please.  
15 COUNCIL CLERK: Men and women of the  
16 City Council, memory is more than just a function of  
17 intellect, it literally defines who we are, both  
18 individually and collectively; and this is why an

15 PUBLIC ADVOCATE GOTBAUM: So ordered.  
16 COUNCIL CLERK: Recchia.  
17 COUNCIL MEMBER RECCHIA: Aye.  
18 COUNCIL CLERK: Oddo.  
19 COUNCIL MEMBER ODDO: Yes.  
20 COUNCIL CLERK: Rivera.  
21 COUNCIL MEMBER RIVERA: I vote aye.  
22 COUNCIL CLERK: Speaker Quinn.  
23 SPEAKER QUINN: Aye.  
24 PUBLIC ADVOCATE GOTBAUM: All Land Use  
25 Call-Ups are adopted by a vote of 47 in the

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2 affirmative and zero in the negative.  
3 Communication from the Speaker.  
4 SPEAKER QUINN: Thank you.  
5 First, before I do formal  
6 communications, I just want to make two  
7 introductions.  
8 We are joined today by a very special  
9 guest. We are joined by Christina Gennaro. Jim  
10 Gennaro's daughter. So, we want to welcome her.  
11 We've set a terrible example for  
12 getting to work on time, and starting on time, so do  
13 what your father says, not what he does, Christina.



14 Go to work on time and start on time.

15 I also will introduce our new  
16 Parliamentarian Barbara Butler, who is here at her  
17 first Stated Meeting. So, if she doesn't call on you  
18 right away or doesn't get your name right, bear with  
19 her because it is her first couple of Stated  
20 Meetings.

21 Now, I just want to comment on some  
22 of the items that we're going to be voting on today,  
23 and then call on the Chair of our Standards and  
24 Ethics Committee, Council Member Inez Dickens, to  
25 speak on a piece of legislation regarding financial

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2 disclosures, and I want to thank Chair Dickens for  
3 her very, very hard work on that legislation.

4 You know, today we are voting on a  
5 number of very important matters.

6 First, I want to mention the taxi  
7 legislation we are voting on today. For many, many  
8 years, some would even say decades, there has been  
9 heated discussion in this City about how to change  
10 our taxis to clean air hybrid taxis, and how to make  
11 our taxis accessible to disabled New Yorkers, and  
12 today we are taking further steps forward in that  
13 process. We are passing a piece of legislation that

14 requires that the upcoming sale of 308 medallions,  
15 in that sale 254 will be hybrid clean air taxis, and  
16 54 will be disabled accessible.

17 But we, in our action today,  
18 recognize that those 54 are not even enough to get a  
19 small enough percentage of the fleet to have a  
20 reasonable pilot project out there to see what  
21 models are the most durable, and obviously our  
22 ultimate goal is to move beyond a pilot project or  
23 very, very small percentages.

24 So, in an effort to make sure we have  
25 a larger number and enough to truly do a pilot

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2 sampling, the Mayor and the Council have committed  
3 to go to Albany and see another medallion sale of  
4 150 more medallions, all of which this law will  
5 require will be disabled accessible when they are  
6 sold.

7 I want to thank the disabled  
8 community for their endless work on this issue and  
9 the environmental community. I also want to thank  
10 Mayor Bloomberg for his commitment to go to Albany  
11 with the Council. We received tremendously positive  
12 responses from State officials about our interest in

13 150 more medallions, and I also want to say that we  
14 will be in the upcoming Stated Meetings doing an SLR  
15 on this matter to lock in our message to Albany and  
16 a Home Rule Message.

17 We are also today voting on a package  
18 of legislation which comes out -- on taxis I want to  
19 thank Chairperson John Liu for his tremendous amount  
20 of work he did on this issue, Chairperson Jim  
21 Gennaro from our Environmental Committee, and  
22 Council Member Oliver Koppell for his work on this  
23 issue as well.

24 We are also today voting on a package  
25 of lobbying bills, and I want to thank the Chair of

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2 our Gov Ops Committee, Simcha Felder, for his work  
3 on lobbying, and Chairperson Diana Reyna for her  
4 work on it as well, it went through both Committees.  
5 The bills we are voting on today on  
6 lobbying take a very, very important step forward in  
7 making sure that New York City has the strongest  
8 ethical infrastructure possible as it relates to  
9 lobbyists and their interactions with elected  
10 officials. And it puts a system in place that will  
11 make sure that the scandals that have plagued other  
12 legislative bodies in this country do not happen in

13 this building on in this House and the people of the  
14 City of New York.

15 We spent a long time discussing these  
16 bills, and I want to thank my colleagues for their  
17 tremendous attention and support on this message.

18 They will add transparency to the  
19 process and they will very importantly bring  
20 sunlight in, which we all know is the best  
21 disinfectant. And I think they sent a very important  
22 message to New Yorkers that we work for them, not  
23 for anyone else.

24 Also, as the hour indicates, based on  
25 our long Rules Committee, and I want to give yet

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2 another thank you to Council Member Diana Reyna, we  
3 will be voting on the appointment of Margery  
4 Perlmutter to the Landmarks Preservation Commission.  
5 It was a heated, but yet thoughtful meeting that  
6 occurred, and I hope my colleagues will vote in  
7 support of her and in favor of all of the items that  
8 I indicated.

9 I would like to call on the Chair of  
10 our Standards and Ethics Committee, Council Member  
11 Inez Dickens.

12 COUNCIL MEMBER DICKENS: Thank you,  
13 Madam Speaker, and thank you, Madam Public Advocate.

14 I'm requesting permission to address  
15 my colleagues on Intro. 165.

16 Intro. 165 would amend the City's  
17 Financial Disclosure Law in three very important  
18 ways: First, and most importantly, it would bring  
19 our City law into compliance with recent changes to  
20 New York State law with regards to persons required  
21 to file a Financial Disclosure Form.

22 Second, it would clarify and codify  
23 the longstanding practices of the Conflicts of  
24 Interest Board.

25 And thirdly, it would make several

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2 technical changes that clarify the law, making it  
3 easier to understand and follow.

4 Intro. 165 makes many useful and  
5 necessary amendments to the City's Financial  
6 Disclosure Law, and I urge my colleagues to pass it  
7 today. Thank you.

8 PUBLIC ADVOCATE GOTBAUM: Discussion  
9 of General Orders.

10 Council Member Monserrate.

11 COUNCIL MEMBER MONSERRATE: Thank you,

12 Madam Chair.

13 I would like the opportunity to vote  
14 aye on all. Thank you very much.

15 PUBLIC ADVOCATE GOTBAUM: So ordered.  
16 Council Member Avella, I thought it  
17 was later?

18 COUNCIL MEMBER AVELLA: Thank you,  
19 Madam Public Advocate. I wanted to talk for a few  
20 minutes about M 117 and the accompanying Reso 350,  
21 which is the appointment of Margery Perlmutter to  
22 the Landmarks Preservation Commission.

23 I find it fascinating that we have  
24 this coincidence today that we are making these  
25 changes improving the lobbying laws of the City of

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2 New York, and further restricting lobbyists in their  
3 activities in relation to the City Council; yet, at  
4 the same time, we're for the first time approving  
5 the first lobbyist, the first registered lobbyist to  
6 the Landmarks Preservation Commission.

7 Ms. Perlmutter is certainly  
8 qualified, and I'm sure she's well intentioned, but  
9 there is an old adage "You can't serve two masters,"  
10 and considering that she works for Brian Kaye, which

11 is a development real estate firm, she is a  
12 registered lobbyist, she will never, ever be able to  
13 100 percent recuse herself from all the issues that  
14 are involved.

15 I think it sends a very poor message  
16 to the preservation community and the good  
17 government community of the City that we're allowing  
18 this nomination to go ahead.

19 I would urge my colleagues to vote  
20 no. I certainly will.

21 Thank you, Madam Public Advocate.

22 PUBLIC ADVOCATE GOTBAUM: All right,  
23 Council Member Gennaro. Sorry, Jim.

24 COUNCIL MEMBER GENNARO: Thank you,  
25 Madam Public Advocate.

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2 I just wanted to thank the Speaker  
3 regarding Intro. 339, the taxi medallion bill. I  
4 would like to thank in a special way Council Member  
5 Liu, Council Member Koppell and Council Member  
6 Yassky, Mendez and all the other members who are  
7 supporting this bill. This will be a great step  
8 forward for the air of New York City, and it's also,  
9 thanks to the Speaker's leadership, we're not going  
10 to be leaving behind those that need taxis that need

11 to be accessible. So, we're getting the extra 150  
12 medallions from Albany and having that sale  
13 completely dedicated to the disabled community. This  
14 bill represents a great step forward for that  
15 community and for a breath of fresh air for all of  
16 New Yorkers.

17 So, I thank the Speaker and all  
18 involved, and I urge my colleagues to vote yes on  
19 Intro. 339.

20 PUBLIC ADVOCATE GOTBAUM: Council  
21 Member James.

22 COUNCIL MEMBER JAMES: May I be  
23 excused to vote aye on the agenda, except for M 117  
24 and Reso 350. I vote aye on everything else. And as  
25 I leave, may Amber Sadiq, the eight-year-old girl

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2 who was tragically killed in Crown Heights, may her  
3 soul rest in peace.

4 Thank you.

5 PUBLIC ADVOCATE GOTBAUM: So ordered.

6 COUNCIL MEMBER JAMES: No on those two  
7 items M 117 and 350.

8 PUBLIC ADVOCATE GOTBAUM: He didn't  
9 hear.



10 Anybody else?  
11 Seeing nobody else, Report of Special  
12 Committees.  
13 COUNCIL CLERK: None.  
14 PUBLIC ADVOCATE GOTBAUM: Reports of  
15 Standing Committees.  
16 COUNCIL CLERK: Report of the  
17 Committee on Finance.  
18 Preconsidered Reso 339. Establishment  
19 of the Bayridge Fifth Avenue Business Improvement  
20 District.  
21 SPEAKER QUINN: Coupled on General  
22 Orders.  
23 COUNCIL CLERK: Report of the  
24 Committee on Governmental Operations.  
25 Intro. 190-A. Reporting of lobbyist

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2 activities.  
3 SPEAKER QUINN: Amended and coupled on  
4 General Order with Message of Necessity.  
5 COUNCIL CLERK: Intro. 191-A. Gifts by  
6 lobbyists.  
7 SPEAKER QUINN: Amended and coupled on  
8 General Orders with the Message of Necessity.  
9 COUNCIL CLERK: Intro. 192-A. Campaign

10 contributions by lobbyists.

11 SPEAKER QUINN: Amended and coupled on  
12 General Orders.

13 COUNCIL CLERK: Report of the  
14 Committee on Land Use.

15 LU 68 and Reso 343, ULURP, Bronx.

16 SPEAKER QUINN: Coupled on General  
17 Orders.

18 COUNCIL CLERK: LU 127 and Reso 344,  
19 UDAAP, Brooklyn.

20 SPEAKER QUINN: Coupled on General  
21 Orders.

22 COUNCIL CLERK: LU 136 and Reso 345.  
23 UDAAP, Queens.

24 SPEAKER QUINN: Coupled on General  
25 Order.

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2 COUNCIL CLERK: LU 143 and Reso 346.  
3 Unenclosed sidewalk cafe, Brooklyn.

4 SPEAKER QUINN: Coupled to be filed,  
5 pursuant to letter of withdrawal. That threw me for  
6 a loop there.

7 COUNCIL CLERK: Preconsidered LU 160  
8 and Reso 347. Tax exemption for property, Bronx.

9 SPEAKER QUINN: Thank God, back to  
10 coupled on General Orders.

11 PUBLIC ADVOCATE GOTBAUM: We laugh at  
12 the most simple things.

13 COUNCIL CLERK: Report of the  
14 Committee on Rules, Privileges and Elections.

15 Preconsidered Reso 348. Limiting  
16 access of lobbyists.

17 SPEAKER QUINN: Coupled on General  
18 Orders.

19 COUNCIL CLERK: Preconsidered Reso  
20 349. Membership changes to certain standing  
21 committees.

22 SPEAKER QUINN: Coupled on General  
23 Order.

24 COUNCIL CLERK: M 117 and Reso 350.  
25 Appointment of Margery H. Perlmutter. New York City

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2 Landmarks Preservation Commission.

3 SPEAKER QUINN: Coupled on General  
4 Orders.

5 COUNCIL CLERK: Report of the  
6 Committee on Standards and Ethics.

7 Intro. 165. Annual disclosure.

8 SPEAKER QUINN: Coupled on General

9 Orders.

10 COUNCIL CLERK: Report of the  
11 Committee on Transportation.

12 Intro. 339-A. Additional taxicab  
13 licenses.

14 SPEAKER QUINN: Amended and coupled on  
15 General Orders with Message of Necessity.

16 PUBLIC ADVOCATE GOTBAUM: General  
17 Order Calendar.

18 COUNCIL CLERK: Resolution appointing  
19 various persons Commissioner of Deeds.

20 SPEAKER QUINN: Coupled on General  
21 Orders.

22 And I now ask that roll call be  
23 called on all coupled General Order items.

24 COUNCIL CLERK: Addabbo.

25 COUNCIL MEMBER ADDABBO: Aye.

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2 COUNCIL CLERK: Arroyo.

3 COUNCIL MEMBER ARROYO: Aye.

4 COUNCIL CLERK: Avella.

5 COUNCIL MEMBER AVELLA: Aye on all,  
6 except M 117 and Reso 350, I vote no.

7 COUNCIL CLERK: Baez.

8 COUNCIL MEMBER BAEZ: Aye.

9 COUNCIL CLERK: Barron.

10 COUNCIL MEMBER BARRON: May I be  
11 excused to explain my vote?

12 PUBLIC ADVOCATE GOTBAUM: So ordered.

13 COUNCIL MEMBER BARRON: I vote aye on  
14 all items, except M 117 and Reso 350. This, to me,  
15 is an obvious conflict of interest. But evidently  
16 people have some other interest in this happening,  
17 but I think it is a conflict and I think we should  
18 -- I vote no on that. Thank you.

19 COUNCIL CLERK: Brewer.

20 COUNCIL MEMBER BREWER: I vote aye on  
21 all, except M 117 and Reso 350. I sat through most  
22 of the hearing, I think that Margery Perlmutter is  
23 certainly qualified on paper. I assume that she will  
24 be given the opportunity to serve on the Landmarks  
25 Preservation Commission, and I hope not only will

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2 she respond to the concerns brought up today in  
3 terms of conflicts, but make a huge, huge effort to  
4 reach out to those who have been fighting in the  
5 preservation field for many years, and whose voices  
6 are often heard but not always listened to. So, I  
7 vote, as I indicated, aye on all others. Thank you.

8 COUNCIL CLERK: Clarke.  
9 COUNCIL MEMBER CLARKE: Aye on all.  
10 COUNCIL CLERK: Comrie.  
11 COUNCIL MEMBER COMRIE: Aye on all.  
12 COUNCIL CLERK: DeBlasio.  
13 COUNCIL MEMBER DEBLASIO: Aye on all.  
14 COUNCIL CLERK: Dickens.  
15 COUNCIL MEMBER DICKENS: Yes, I vote  
16 aye on all, except for M 153.  
17 COUNCIL CLERK: Dilan.  
18 COUNCIL MEMBER DILAN: Madam Public  
19 Advocate, may I have a brief moment to explain my  
20 vote?  
21 PUBLIC ADVOCATE GOTBAUM: So ordered.  
22 COUNCIL MEMBER DILAN: Madam Public  
23 Advocate, I want to comment specifically on Intro.  
24 192-A, which is before us today.  
25 192-A essentially states that

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2 contributions to anyone running for City office from  
3 lobbyists who pay with a personal check wouldn't be  
4 matched by the Campaign Finance Board.  
5 While, Madam Public Advocate, I  
6 intend to vote for this measure, I think that in

7 interest of keeping the rights of every New York  
8 citizen, whether they be a lobbyist, reporter, a  
9 doctor, a teacher, a Council Member, a Mayor, a  
10 grandmother or they're retired, all rights of all  
11 New Yorkers when it relates to Campaign Financing  
12 should be exactly equal, and what we're doing here  
13 is we're basically saying that these people, if they  
14 pay out of their personal checking accounts, and  
15 funds should be matched, that because of their  
16 profession, that they are not allowed to have their  
17 contribution matched.

18 Now, a doctor can easily weigh-in  
19 without being a registered lobbyist on matters  
20 before the Health Committee, and many other  
21 professionals could do so before many other  
22 committees, because we often seek professional  
23 opinions on items before us.

24 I think that we are opening a  
25 precedent that I hope doesn't continue to other

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2 professionals. I think in this case, not as a  
3 lobbyist, but as a citizen of the City of New York,  
4 I believe it's fundamentally unfair, what's being  
5 done to them as residents of this great City;  
6 however, I understand the purpose of trying to clean

7 up the entire electoral process and lobby reform  
8 process. But I think they also have rights as  
9 citizens of the City of New York, and I think that  
10 we are charged with protecting those rights.

11 So, I think we need to be very  
12 careful in the future, should we look to take  
13 measures such as this down the road.

14 But with that, Madam Public Advocate,  
15 I vote aye on all items.

16 COUNCIL CLERK: Felder.

17 COUNCIL MEMBER FELDER: Aye.

18 COUNCIL CLERK: Fidler.

19 COUNCIL MEMBER FIDLER: May I be  
20 briefly excused to explain my vote?

21 PUBLIC ADVOCATE GOTBAUM: So ordered.

22 COUNCIL MEMBER FIDLER: First I just  
23 want to compliment Councilwoman Reyna for the  
24 dignified manner in which you handled an  
25 extraordinarily difficult hearing, a hearing that

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2 probably shouldn't have had to have been as  
3 difficult as it was, and I suggest that the  
4 Administration, if they care about their appointees,  
5 do just a little bit more ahead of time so that the



6 communication on some of the issues that were raised  
7 today is better.

8                   Second, I don't think it would be  
9 fair or proper for us to vote on an issue regarding  
10 disabled accessible taxicabs without mentioning the  
11 name of Sister Margarita Lopez in this House, who is  
12 certainly my conscience and is probably all our  
13 conscience on this issue, and with Margarita in  
14 mind, I vote aye on all.

15                   COUNCIL CLERK: Foster.

16                   COUNCIL MEMBER FOSTER: I vote aye on  
17 all, except M 117 and Reso 350 I vote no.

18                   COUNCIL CLERK: Gennaro.

19                   COUNCIL MEMBER GENNARO: Pass.

20                   COUNCIL CLERK: Gerson.

21                   COUNCIL MEMBER GERSON: May I be  
22 excused to briefly explain my vote?

23                   PUBLIC ADVOCATE GOTBAUM: So ordered.

24                   COUNCIL MEMBER GERSON: Thank you. I  
25 vote aye on all. With respect to the disposition of

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2 taxi medallion, this is a step forward for cleaner  
3 air and a more accessible fleet, but it should only  
4 be viewed as a first step forward, an important step  
5 forward for which I join in congratulating my

6 neighbor and predecessor, Margarita Lopez, our  
7 Speaker Chris Quinn, and Council Members John Liu  
8 and Jim Gennaro.

9 But we need to overcome the  
10 technological hurdle, if you will, of this conflict  
11 between clean air vehicles and fully accessible  
12 vehicles.

13 In this day and age with  
14 technological innovations coming on line at rapid  
15 pace every day, we should be able, with a concerted  
16 effort, to find a way to have it both ways, to have  
17 clean air, fully accessible vehicles, and I urge  
18 that this Council spearhead the technological  
19 effort, make sure that it's undertaken, and this  
20 points to the underlying need for us to do a better  
21 job, an expanded job at integrating technology into  
22 policy problem solving, with a greater role for  
23 technological research, a government which does that  
24 with an eye towards dealing with our urban problems  
25 and policies.

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2 With respect to the nomination of Ms.  
3 Perlmutter, I vote aye on the basis of the record of  
4 the hearing, the commitment to abide strictly to

5 conflict of interest guidelines and the recusal  
6 statements made by the, by all accounts very  
7 qualified nominee, in the context of recognition  
8 that in order to have persons with her background,  
9 we need to allow for such recusals.

10 And finally, with respect to lobbying  
11 reform, I vote aye on all, with the caveat which I  
12 made in the caucus, we must look toward greater  
13 simplification of our ethics laws to keep them tied  
14 to their underlying purposes of transparency,  
15 openness and integrity.

16 I vote aye for all.

17 COUNCIL CLERK: Gonzalez.

18 COUNCIL MEMBER GONZALEZ: Aye on all.

19 COUNCIL CLERK: Jackson.

20 COUNCIL MEMBER JACKSON: Jackson. Aye  
21 on all.

22 COUNCIL CLERK: Katz.

23 COUNCIL MEMBER KATZ: Aye on all. And  
24 just to echo the words from Council Member Fidler, I  
25 think the hearing was much more difficult today than

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2 it had to be. Up until yesterday, truly, we were  
3 only hearing from the advocates, and I think that in  
4 the future when there's a controversial candidate or

5 someone who folks are talking about weeks ahead of  
6 time, it would be nice to get a lot of the issues  
7 resolved beforehand, through meetings and phone  
8 calls from the Administration, and we look forward  
9 to those working with them on future applications in  
10 that light.

11 I vote aye on all.

12 COUNCIL CLERK: Koppell.

13 COUNCIL MEMBER KOPPELL: Madam Public  
14 Advocate, may I be excused from voting to explain my  
15 reasons?

16 PUBLIC ADVOCATE GOTBAUM: Yes.

17 COUNCIL MEMBER KOPPELL: Thank you.

18 PUBLIC ADVOCATE GOTBAUM: Sorry.

19 COUNCIL MEMBER KOPPELL: The bill that  
20 we have on the agenda that we're voting on right now  
21 with respect to accessible and cleaner taxis relates  
22 only to new medallions and the conditions with  
23 respect to the issuance of new medallions.

24 As such, it is very limited and has  
25 to be very limited. It's probably all we can do

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2 today with respect to this issue. However, if you  
3 look in today's agenda, you will see a series of

4 bills that have been introduced, a number of them by  
5 me, as Chairman of the Committee that has the  
6 responsibility over disability rights. And I also  
7 will indicate that the staff have worked on another  
8 bill to provide for the full phase-in of a  
9 requirement that all taxicabs, as they are replaced,  
10 be replaced with accessible vehicles over a period  
11 of years.

12                   The fact is that the cabs today,  
13 yellow cabs, can only run for three years. They have  
14 a relatively short cycle. And it allows us to do  
15 more than simply require accessible or clean taxis  
16 with respect to new medallions. It allows us to  
17 reform the entire fleet within a short time, and I  
18 want to say that I think this Council is committed  
19 to doing that as quickly as possible.

20                   And as I said before, necessity is  
21 the mother of invention, and the industry out there  
22 ought to be aware, this Council is moving toward  
23 requiring that entire fleet to be accessible and  
24 also to be environmentally sound.

25                   And if the cars don't exist to

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2 provide that today, they should exist soon, and the  
3 world, if you will, or the industry, both those who

4 own cabs and those who build them, should be aware  
5 that this is the direction in which we're going, and  
6 I urge my colleagues to join us. I know that the  
7 Transportation Committee will be holding hearings on  
8 these other bills that deal with a much broader  
9 universe than merely the relatively few cabs that  
10 come on line because of the sale of new medallions.

11 I withdraw my request. I vote aye on  
12 all on the General Orders calendar.

13 COUNCIL CLERK: Lanza.

14 (No response.)

15 COUNCIL CLERK: Lappin.

16 COUNCIL MEMBER LAPPIN: Madam Public  
17 Advocate, may I be excused to explain my vote?

18 PUBLIC ADVOCATE GOTBAUM: So ordered.

19 COUNCIL MEMBER LAPPIN: Over the past  
20 couple of weeks I had many discussions and  
21 deliberations regarding the nomination of Margery  
22 Perlmutter for the Landmarks Preservation  
23 Commission, and people who I respect greatly have  
24 weighed in on different sides of the same issue. And  
25 it became clear to me during the hearing today that

50

1 STATED COUNCIL MEETING

2 she is qualified to serve as a Commissioner. During

3 all the many hours of testimony we heard, there  
4 wasn't debate about her resume or qualifications,  
5 the debate centered around her record and potential  
6 conflicts of interest. And the Municipal Arts  
7 Society, who did a great deal of work examining her  
8 record, did testify that her decisions were within  
9 the mainstream and allayed the issue for me on that  
10 front. In terms of conflict of interest, I will say  
11 I'm not particularly comfortable about commissioners  
12 who sit on one commission and being able to lobby  
13 before other City agencies. And that said, the rules  
14 are the way that they are, and considering that Ms.  
15 Perlmutter is qualified and will not be compensated  
16 for this position, I vote aye on all.

17 COUNCIL CLERK: Liu.

18 COUNCIL MEMBER LIU: Madam Public  
19 Advocate, may I be excused to explain my vote?

20 PUBLIC ADVOCATE GOTBAUM: So ordered.

21 COUNCIL MEMBER LIU: I just want to  
22 thank my colleagues for their support on Intro.  
23 339-A, and the Speaker for taking on this issue,  
24 convening a very large and substantial task force of  
25 legislative counsels and various committees to study

1 STATED COUNCIL MEETING

2 the issues with regard to our accessibility to our

3 taxicabs, as well as making them more  
4 environmentally friendly in our City. And I know  
5 that the legislative counsels have put in a great  
6 deal of time and effort in studying these issues  
7 intensely and thoroughly so that we can proceed with  
8 this bill that we're voting on today, and a package  
9 of subsequent bills that will be introduced and  
10 heard at a later date in the near future, as  
11 described by Chairman and Council Member Oliver  
12 Koppell.

13 I especially want to thank Rob Newman  
14 for his insight and his work in making sure that  
15 this moves quickly, and Phil Hom, the Legislative  
16 Counsel to the Transportation Committee, and I hope  
17 that we can have your support, my colleagues. Thank  
18 you.

19 COUNCIL CLERK: Mark Viverito.

20 COUNCIL MEMBER MARK VIVERITO: Madam  
21 Public Advocate, may I please be excused to explain  
22 my vote?

23 PUBLIC ADVOCATE GOTBAUM: So ordered.

24 COUNCIL MEMBER MARK VIVERITO: I would  
25 like to vote aye on all items coupled under General



2 Order, except M 117 and companion Reso 350. And I  
3 just wanted to take the opportunity also to really  
4 commend, Madam Speaker, and for her, the lobby  
5 reform, the stewardship she demonstrated on the  
6 lobby reform bills, which I greatly welcome, and I  
7 thank her for that. So, having that, again, aye on  
8 all, except M 117 and companion Reso 350.

9 COUNCIL CLERK: Martinez.

10 (No response.)

11 COUNCIL CLERK: McMahon.

12 COUNCIL MEMBER McMAHON: Aye on all.

13 COUNCIL CLERK: Mealy.

14 COUNCIL MEMBER MEALY: Aye on all  
15 coupled General Orders. And with permission, aye on  
16 all Land Use Call-Ups.

17 PUBLIC ADVOCATE GOTBAUM: So ordered.

18 COUNCIL CLERK: Palma.

19 COUNCIL MEMBER PALMA: Aye on all,  
20 except M 117 and companion Reso 350.

21 COUNCIL CLERK: Recchia.

22 COUNCIL MEMBER RECCHIA: Aye on all.

23 COUNCIL CLERK: Reyna.

24 COUNCIL MEMBER REYNA: I vote aye on  
25 all.

2 COUNCIL CLERK: Sanders.

3 COUNCIL MEMBER SANDERS: Madam Public  
4 Advocate, permission to explain my vote?

5 PUBLIC ADVOCATE GOTBAUM: So ordered.

6 COUNCIL MEMBER SANDERS: I wish that I  
7 had been given more information about M 117 and  
8 Resolution 350. However, I have to assume that the  
9 Chair has led a thoughtful discussion. It was  
10 certainly prolonged, so I will assume that it was  
11 thoughtful and they were able to research the  
12 issues.

13 With that in mind, based on knowledge  
14 of the Chair, I'm voting aye on all.

15 COUNCIL CLERK: Seabrook.

16 COUNCIL MEMBER SEABROOK: Yes, Madam  
17 President, may I be excused to explain my vote,  
18 please?

19 PUBLIC ADVOCATE GOTBAUM: So ordered.

20 COUNCIL MEMBER SEABROOK: Yes, I just  
21 want to state a point to go on record that here  
22 we're talking about the need to have these new  
23 medallions for the taxi industry, to serve those who  
24 have disabilities, and that certainly should be  
25 applauded that this Council is doing that.

1 STATED COUNCIL MEETING

2 But I would hope that people will  
3 understand that the disabilities on the other end  
4 that we need to serve, is that when we begin to  
5 issue medallions, there needs to be a sense of  
6 minority and women participation, because after all,  
7 the State Legislature and the Caucus members there  
8 who fought so diligently to assure that there would  
9 be medallions that would be put in use of the City  
10 of New York, the opportunity for minority and  
11 women-owned business should have an opportunity to  
12 participate in this medallion sale. While the  
13 drivers may look like me, the owners never do. And I  
14 would hope that we would have the opportunity that  
15 as we talk about these medallions that are going to  
16 be in the future, that we will have, as Brother  
17 Vallone, Council Member Vallone had indicated, that  
18 these taxis will come into our neighborhoods as  
19 well, be it a handicapped vehicle or a regular  
20 yellow cab that never comes into our community, and  
21 so that we should have a set aside of those  
22 medallions, and those who have the guts and the  
23 courage to come into our community, that they should  
24 be afforded the opportunity to own medallions, and  
25 that it should not just be issued to those who are

1 STATED COUNCIL MEETING

2 yellow, and as we know about the ones who weren't  
3 yellow and went everywhere throughout this City.

4 And, so, it is our hope that we could  
5 be courageous to implement a minority and  
6 women-owned set-aside provision that would allow  
7 those medallions to come into those neighborhoods  
8 where we don't ever see yellow cabs coming into our  
9 community, and I would hope that the disabled  
10 community would have the opportunity to have as many  
11 cabs as they desire, but I'd like to see one of  
12 those yellow cabs roll up into my community some  
13 time, and I can say truly that a person of color  
14 owns medallions, and it is a part of the  
15 accumulation of wealth that the father will own it  
16 today, the son will own it tomorrow, the grandson  
17 will own it thereafter. So, understand what we're  
18 doing.

19 So, with that, I withdraw my request  
20 and vote aye.

21 COUNCIL CLERK: Sears.

22 COUNCIL MEMBER SEARS: Aye.

23 COUNCIL CLERK: Stewart.

24 COUNCIL MEMBER STEWART: Aye on all.

25 COUNCIL CLERK: Vacca.

1 STATED COUNCIL MEETING

2 COUNCIL MEMBER VACCA: Aye on all.

3 COUNCIL CLERK: Vann.

4 COUNCIL MEMBER VANN: Aye on all.

5 COUNCIL CLERK: Weprin.

6 COUNCIL MEMBER WEPRIN: Aye on all.

7 COUNCIL CLERK: White.

8 COUNCIL MEMBER WHITE: May I be

9 excused to vote on all Land Use Call-Ups, please?

10 PUBLIC ADVOCATE GOTBAUM: So ordered.

11 COUNCIL MEMBER WHITE: On all Land Use

12 Call-Ups I vote aye. And on all coupled General

13 Orders, I echo the comments of my fellow Council

14 Member Seabrook, therefore, I vote aye on all.

15 COUNCIL CLERK: Yassky.

16 COUNCIL MEMBER YASSKY: Madam Public

17 Advocate, may I explain my vote?

18 PUBLIC ADVOCATE GOTBAUM: So ordered.

19 COUNCIL MEMBER YASSKY: First of all,

20 I vote very enthusiastically for the bill that will

21 put new clean fuel only medallions and accessible

22 only medallions out in the street. I think this is a

23 very good step forward.

24 I think, though, we must not rest

25 with this step. We have many more steps to go on the

1 STATED COUNCIL MEETING

2 journey toward an accessible fleet and a clean air  
3 fleet, and the way to do it is we've got to go back  
4 and look at the rules that govern the 13,000 cabs  
5 that are already driving around and get more of  
6 those to be accessible, and get all of those to be  
7 clean fuel so that we can, which in a City with one  
8 out of eight kids suffering with asthma, I think  
9 that's got to be the next step.

10 So, I look forward to doing that.

11 I also, on the appointment to the  
12 Landmarks Preservation Commission, I will vote  
13 against this confirmation, not because I have any  
14 doubt about the quality of Ms. Perlmutter or whether  
15 indeed she is committed to being fair, but I do  
16 think that there is a conflict of interest in having  
17 somebody who is so engaged in this field on a  
18 day-to-day basis, representing clients.

19 It's not so easy to separate out one  
20 client, from the position that client stands for,  
21 which will benefit other clients, and I think that  
22 the precedent concerns me. And, so, in the interest  
23 of preservation, I vote no on M 117 and Res 350, and  
24 aye on all other matters. Thank you.

25 COUNCIL CLERK: Gennaro.

1 STATED COUNCIL MEETING

2 COUNCIL MEMBER GENNARO: I vote yes on  
3 all. And with respect to M 117 and Reso 350, I wish  
4 to be associated with the remarks of Council Member  
5 Lappin. So it's aye on all.

6 COUNCIL CLERK: Lanza.

7 COUNCIL MEMBER LANZA: Aye.

8 PUBLIC ADVOCATE GOTBAUM: Council  
9 Member Gioia.

10 COUNCIL MEMBER GIOIA: Thank you,  
11 Madam Public Advocate.

12 I would just like to clarify the  
13 record. I will be voting yes today on all items,  
14 with the exception of M 117, Resolution 350, which I  
15 will be voting no on. Thank you.

16 COUNCIL CLERK: Oddo.

17 COUNCIL MEMBER ODDO: Can I be  
18 temporarily excused to explain my vote and have a  
19 little fun?

20 PUBLIC ADVOCATE GOTBAUM: Of course.

21 COUNCIL MEMBER ODDO: Thank you.

22 Today's agenda is full with lots of  
23 serious things, but on today's agenda is humor  
24 because if we don't have humor in this body, this  
25 job is very difficult. And along those lines, there

1 STATED COUNCIL MEETING

2 is a reporter running around asking all of you who  
3 the funniest Council member is, and we've already  
4 conceded the race to Simcha Felder, but please find  
5 it in your hearts to vote for me in second place.  
6 It's one of the few things I have in my life.

7 COUNCIL MEMBER FELDER: Don't give him  
8 anything.

9 COUNCIL MEMBER ODDO: How dare you.  
10 I vote yes on all.

11 COUNCIL CLERK: Rivera.

12 COUNCIL MEMBER RIVERA: I vote aye.

13 COUNCIL CLERK: Speaker Quinn.

14 SPEAKER QUINN: I'm laughing at a  
15 retold Simcha joke. Just before I cast my vote, I  
16 heard some people had me on a tie for two and three,  
17 so it might be a show-down.

18 COUNCIL MEMBER FELDER: That wasn't  
19 funny. That was not funny.

20 SPEAKER QUINN: But Staten Island will  
21 probably win, so...

22 I vote aye on all.

23 PUBLIC ADVOCATE GOTBAUM: All items on  
24 today's General Order calendar were adopted by a  
25 vote of 49 in the affirmative, zero negative, zero



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1 STATED COUNCIL MEETING

2 abstentions, with the exception of M 117 and Reso

3 350, which was adopted by a vote of 39 in the

4 affirmative, ten in the negative and zero

5 abstentions.

6 Introduction and Reading of Bills.

7 Discussion of Resolutions.

8 I'm sorry. Go back. Sorry, Christine.

9 SPEAKER QUINN: That's okay.

10 All bills should be referred to the

11 committees as indicated on the agenda.

12 PUBLIC ADVOCATE GOTBAUM: Discussion

13 of Resolutions.

14 No resolutions.

15 General Discussion.

16 Here's an unusual one now, I'm going

17 to make a statement, and this is probably the first

18 time, I'm just talking about Intro. 359, which I

19 hope my colleagues --

20 SPEAKER QUINN: If we could just have

21 quiet in the Chambers, please.

22 PUBLIC ADVOCATE GOTBAUM: And Chris,

23 you can time me.

24 SPEAKER QUINN: No. I'll let you go.

25 PUBLIC ADVOCATE GOTBAUM: I just want

GL

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# ORIGINAL

1 UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 -----X  
4 TOM OGNIBENE, YVETTE VELAZQUEZ BENNETT, VIVIANA  
5 VAZQUEZ-HERNANDEZ, MARTIN DILAN, MARLENE TAPPER,  
6 LEROY COMRIE, ROBERT PEREZ, FRAN REITER, SHEILA  
ANDERSEN-RICCI, MARTINA FRANCA ASSOCIATES, LLC,  
DENIS GITTENS, OSCAR PEREZ, MICHELE RUSSO,  
THE KINGS COUNTY COMMITTEE OF THE NEW YORK STATE  
CONSERVATIVE PARTY, and THE NEW YORK STATE  
CONSERVATIVE PARTY,

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PLAINTIFFSs,  
-against- Case No:  
08cv01335  
(LTS) (TDK)

10 FREDERICK A.O. SCHWARZ, JR., in his  
11 official capacity as Chairman of New York  
12 City's Campaign Finance Board; DALE C.  
13 CHRISTENSEN, JR., JOSEPH P. PARKES, S.J,  
14 KATHERYN C. PATTERSON, and MARK S. PIAZZA,  
15 in their official capacities as Members of  
16 New York City's Campaign Fiance Board;  
17 MARK DAVIES, in his official capacity as  
18 Executive Director of the New York City  
Conflicts of Interest Board; MONICA BLUM,  
STEVEN ROSENFELD, ANDREW IRVING, ANGELA M.  
FREYRE, in their official capacity as  
Members of New York City's Board of  
Conflicts of Interest; and MICHAEL  
McSWEENEY, in his official capacity as  
Acting City Clerk of New York City,

19 DEFENDANTS.  
20 -----X

21 DATE: June 18, 2008

22 TIME: 3:10 P.M.

23

24 (Deposition of SHEILA ANDERSEN-RICCI)

25

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2

3

DATE: June 18, 2008

4

TIME: 3:10 P.M.

5

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EXAMINATION BEFORE TRIAL of the Plaintiff,  
SHEILA ANDERSEN-RICCI, taken by the Defendant, pursuant to  
a Court Order and to the Federal Rules of Civil Procedure,  
held at the office of Special Federal Litigation, New York  
City Law Department, 100 Church Street, New York, New York  
10007, before Charlene Fountaliotis, a Notary Public of the  
State of New York.

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1 A P P E A R A N C E S:

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3

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7

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11

12

13 MICHAEL A. CARDOZO, ESQ.  
CORPORATION COUNSEL  
Attorneys for the Defendants  
14 THE CITY OF NEW YORK  
100 Church Street  
15 New York, New York 10007  
BY: STEPHEN KITZINGER, ESQ.  
16 File #: 2008-004838  
Control #: III02260

17

18

19 NEW YORK CITY CAMPAIGN FINANCE BOARD  
DEPUTY GENERAL COUNSEL  
Attorneys for the Defendants(s)  
20 NEW YORK CITY CAMPAIGN FINANCE BOARD  
40 Rector Street, Seventh Floor  
21 New York, New York 10006  
BY: HILLARY WEISMAN, ESQ.

22

23 ALSO PRESENT:  
Samantha Reid

24

\* \* \*

25

S. ANDERSEN-RICCI

1 S H E I L A A N D E R S E N R I C C I, called as a  
2 witness, having been first duly sworn by a Notary Public of  
3 the State of New York, was examined and testified as  
4 follows:

5 EXAMINATION BY

6 MR. KITZINGER:

7 Q. Please state your name for the record.

8 A. Sheila Andersen-Ricci.

9 Q. Please state your address for the record.

10 A. 339 West 70th Street, New York, New York 10023.

11 Q. Good afternoon, Mrs. Ricci.

12 A. Good afternoon.

13 Q. My name is Stephen Kitzynger. I'm Assistant  
14 Corporation Counsel in the office of Corporation Counsel in  
15 the New York City Law Department. I'm here to ask you a  
16 series of questions today in a case that you along with a  
17 series of other people brought against the Campaign Finance  
18 Board challenging the Finance Bill. Do you understand  
19 that?

20 A. Yes.

21 Q. And have you ever been deposed before?

22 A. No.

23 Q. Do you know what a deposition is?

24 A. Yes.

25 Q. And how do you know what a deposition is?

S. ANDERSEN-RICCI

1 about you and your individual capacity, okay?

2 A. Yes.

3 Q. Have you ever made any contributions to any  
4 candidates for political office in your lifetime?

5 A. No.

6 Q. And that's local, state, or federal?

7 A. No.

8 Q. Have you ever directed anyone to make any  
9 contributions to any political candidates on your behalf?

10 A. No.

11 Q. Is there more than one managing member of Martina  
12 Franca Associates?

13 A. No.

14 Q. And you are the sole managing member?

15 A. Yes.

16 Q. Are there any other members of the LLC known as  
17 Martina Franca Associates?

18 A. No.

19 Q. Has Martina Franca Associates ever made a  
20 contribution to a political candidate at any level?

21 A. No.

22 Q. Has Martina Franca Associates ever directed or  
23 authorized anyone to make such a contribution on its  
24 behalf?

25 A. No.

S. ANDERSEN-RICCI

1 Q. What organizations?

2 A. The Rent Stabilization Association.

3 Q. Any others?

4 A. Small Property Owners of New York.

5 Q. And what is that organization?

6 A. It's a group of small owners who banded together  
7 maybe 18 years ago to work for the benefit of small owners.

8 Q. And any other organizations?

9 A. No.

10 Q. Now, could you repeat the name of that small --

11 A. Small Property Owners of New York SPONY.

12 Q. And are you in a leadership position in that  
13 organization?

14 A. No.

15 Q. Do you know anyone who is in a leader position in  
16 that organization?

17 A. Yes.

18 Q. Who is that?

19 A. Roberta Bernstein.

20 Q. Who is she?

21 A. She is also a small owner.

22 Q. And how do you know her?

23 A. Because she was part of the group that banded  
24 together to form this organization.

25 Q. Were you part of that group also?

S. ANDERSEN-RICCI

1 A. Yes.

2 Q. And how long have you been married to your  
3 husband?

4 A. Twenty-seven years.

5 Q. And does SPONY employ anybody?

6 A. No.

7 Q. Have you ever been in a leadership position with  
8 Small Property Owners of New York?

9 A. No.

10 Q. Have you ever been in a leadership position with  
11 The Rent Stabilization Association?

12 A. No.

13 Q. How did you get involved in this litigation?

14 A. I understood that if you are married to a  
15 lobbyist you are confined by certain laws as far as  
16 donations go.

17 Q. Donations to?

18 A. To candidates or office.

19 Q. How did you come to that understanding?

20 A. I read about it.

21 Q. And this concerned you based on what or did this  
22 concern you this notation?

23 A. Yes.

24 Q. And what was the cause of the concern?

25 A. Since my husband is a lobbyist we may have



S. ANDERSEN-RICCI

1 different opinions about certain candidates.

2 Q. In last 27 years, have you had different opinions  
3 with your husband that caused you to donate or contribute  
4 to a campaign to which he did not contribute to?

5 A. No.

6 Q. Your husband is a lobbyist for The Rent  
7 Stabilization Association?

8 A. Yes.

9 Q. Would it be fair to say that his involvement in  
10 The Rent Stabilization Association is what caused you to  
11 become involved in this litigation?

12 MR. CAPETANAKIS: Objection to the  
13 characterization.

14 Q. You still have to answer?

15 A. Yes.

16 MR. KITZINGER: And just for the record I'd  
17 like if only one of you were to speak on the  
18 record to interpose objections. I have no  
19 feeling about one way or the other which one of  
20 you it will be, but I think it's appropriate that  
21 the record only reflects one attorney speaking.

22 MR. LA RUE: That's fine.

23 Q. And was it your husband also who brought this  
24 Campaign Finance Bill to your attention?

25 A. Yes.

S. ANDERSEN-RICCI

1 Q. And are you being compensated in any way for your  
2 time that you are expending concerning this litigation?

3 A. No.

4 Q. You said your husband is a lobbyist?

5 A. Yes.

6 Q. Does he work for anybody or is he self-employed?

7 A. He works for The Rent Stabilization Association.

8 Q. He is a direct employee of the RSA?

9 A. Yes.

10 Q. And does he do anything other than lobby?

11 A. Yes.

12 Q. Let me clarify. For the RSA, does he have any  
13 responsibility other than lobbying?

14 A. Yes.

15 Q. What are those responsibilities?

16 A. I don't know.

17 Q. Do you know what his title is?

18 A. I don't know that he has a specific title.

19 Q. Do you know any of his responsibilities other  
20 than lobbying?

21 A. No.

22 Q. Can you identify anybody that your husband has  
23 lobbied in the past five years?

24 A. No.

25 Q. Do you know what your husband seeks to establish

S. ANDERSEN-RICCI

1 Q. Have you ever contributed to any political action  
2 committees?

3 A. No.

4 Q. How long have you lived at your current address?

5 A. 1978.

6 Q. So for 30 years?

7 A. Yes.

8 Q. In 1978, did you purchase the structure?

9 A. Yes.

10 Q. And in what capacity did you purchase it, as an  
11 individual?

12 A. Yes.

13 Q. And how long did you own the property in an  
14 individual capacity?

15 A. Always.

16 Q. It's my understanding that the property is owned  
17 by Martina Franca Associates.

18 A. Yes, I don't remember exactly when that happened.

19 Q. Do you think it was in the last ten years or so?

20 A. Yes.

21 Q. And do you recall why you changed the ownership  
22 structure of the property to move it from your name to  
23 Martina Franca Associates, LLC?

24 A. Advice of an attorney.

25 Q. Who was that attorney?

S. ANDERSEN-RICCI

1 Q. So is it your understanding that by transferring  
2 title to the property, the property being 339 West 70th  
3 Street to the LLC, being Martina Franca Associates, your  
4 personal assets are no longer at risk and you cannot be  
5 held personally responsible for anything relating to the  
6 property?

7 A. Yes.

8 Q. And would that be one of the reasons why you  
9 converted ownership?

10 A. Yes.

11 Q. Do you recall if there were any other reasons?

12 A. No.

13 Q. Have you ever been involved in any political  
14 campaigns in any capacity?

15 A. Yes.

16 Q. In what political campaigns?

17 A. Jerry Bohn on the Upper East Side many years ago.

18 Q. Do you know what he was running for?

19 A. Not anymore I don't.

20 Q. And how do you spell his last name?

21 A. I think it was B-O-H-N.

22 Q. I'm sorry going back to an answer that you gave  
23 earlier, but you believe there are some tax benefits to the  
24 LLC structure, what is your understanding of those  
25 benefits, if any?

S. ANDERSEN-RICCI

1 A. Yes.

2 Q. How would you describe that interest?

3 A. I feel they are not property owner friendly.

4 Q. Other than Ms. Quinn and Mr. Otto, do you know  
5 the identity of any other members of the City Counsel?

6 A. No.

7 Q. I'm going to mention some names and ask you if  
8 you know who they are. Do you know who Charles Barren is?

9 A. Yes.

10 Q. Who is Charles Barren?

11 A. Charles Barren I believe is from Brooklyn.. And I  
12 believe he has racist tendencies from what I read in the  
13 papers, I do not know personally.

14 Q. Have you ever had any contact with him?

15 A. No.

16 Q. Alan Gerson?

17 A. No.

18 Q. Simcha Felder?

19 A. No.

20 Q. Thomas White?

21 A. No.

22 Q. No, you never heard --

23 A. I've heard of them.

24 Q. You've heard of Simcha Felder?

25 A. Yes.

S. ANDERSEN-RICCI

1 Q. To the best of your understanding, who is Simcha  
2 Felder?

3 A. I don't know.

4 Q. To the best of your understanding, who is Alan  
5 Gerson?

6 A. I don't know.

7 Q. To the best of your understanding who is Thomas  
8 White?

9 A. I don't know.

10 Q. Do you know how you've heard of these people?

11 A. I read the paper.

12 Q. Newspapers?

13 A. Yes.

14 Q. What newspapers do you read?

15 A. The Post, The Sun and I don't read the political  
16 part of The Times.

17 Q. How come?

18 A. They are too bias.

19 Q. Do you know who Kendall Stewart is?

20 A. No.

21 Q. Does the name sound familiar at all?

22 A. Yes.

23 Q. What about Peter Vallone Junior?

24 A. Yes.

25 Q. Who is that?

S. ANDERSEN-RICCI

1 Q. And would it be your belief that the more money  
2 that such lobbyist would amass, the more contact that he or  
3 she would be able to make with the candidate?

4 MR. LA RUE: Objection to the  
5 characterization.

6 A. No.

7 Q. Do you believe there's a public perception that  
8 campaign contributions by a lobbyist may influence the  
9 actions of elected officials?

10 A. A public perception?

11 Q. Yes.

12 A. Yes.

13 Q. Do you believe there's a public perception that  
14 campaign contributions by family members of lobbyist may  
15 influence the actions of elected officials?

16 A. No.

17 MR. KITZINGER: Let's take a brief recess.

18 (Recess taken.)

19 Q. Mrs. Ricci, I remind you you are still under  
20 oath.

21 During the break did you have an opportunity to  
22 speak to anybody?

23 A. Yes, I spoke to my attorneys and they reminded me  
24 that Martina Franca might also want to contribute as well  
25 as myself.

S. ANDERSEN-RICCI

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MR. LA RUE: Okay.

(Whereupon, at 4:19 p.m., the Examination of  
this Witness was concluded.)

Sheila Andersen-Ricci  
SHEILA ANDERSEN-RICCI

Subscribed and sworn to before me  
this 26 day of July, 2008.

[Signature]  
Notary Public

MITCHELL L. POSILKIN  
Notary Public, State of New York  
No. 02P05074814  
Qualified in Bronx County  
Commission Expires 2/27, 2011



S. ANDERSEN-RICCI

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STATE OF NEW YORK     )  
                                  : ss.  
COUNTY OF NEW YORK    )

I, CHARLENE FOUNTALLOTIS, a Notary Public  
within and for the State of New York, do hereby certify:

That the witness whose deposition is  
hereinbefore set forth, was duly sworn by me and that such  
deposition is a true record of the testimony given by the  
witness.

I further certify that I am not related to any  
of the parties to this action by blood or marriage, and  
that I am in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 27th day of June, 2008.

  
CHARLENE FOUNTALLOTIS

ORIGINAL

1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X  
4 TOM OGNIENE, et. al.,

5  
6 PLAINTIFFS,

7 -against- CA. No:  
8 08CV0335 (LTS) (TDK)

9 SCHWARTZ, et. al.,

10  
11 DEFENDANTS  
12 -----X

13  
14  
15 DATE: June 19, 2008

16  
17 TIME: 3:00 p.m.

18  
19 DEPOSITION of the Plaintiff, YVETTE VELAZQUEZ BENNETT,  
20 taken by the Defendants, pursuant to a Court Order and the  
21 Federal Rules of Civil Procedures, held at the offices of MICHAEL  
22 A. CARDOZO, ESQ., Corporation Counsel, 100 Church Street, New  
23 York, New York 10007, before KATE FRANCOMACARO, a Notary Public  
24 of the State of New York.  
25

1 A P P E A R A N C E S:

2

3 BOPP, COLESON & BOSTROM, ESQS.  
4 Attorneys for the Plaintiffs  
5 1 South 6th Street  
6 Terre Haute, Indiana 47807-3510  
7 BY: JOE LA RUE, ESQ.

6

7

8 MICHAEL A. CARDOZO, ESQ.  
9 CORPORATION COUNSEL  
10 Attorneys for the Defendants  
11 CITY OF NEW YORK  
12 100 Church Street  
13 New York, New York 10007  
14 BY: LISA GRUMET, ESQ.  
15 File #: 2008004838  
16 Control #: III02268

12

13

14 ALSO PRESENT:  
15 HILLARY WEISMAN  
16 EUGENE MEYERS  
17 CORINNE GENTILESCO

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1 Y V E T T E V E L A Z Q U E Z B E N N E T T, called as a  
2 witness, having been first duly sworn by a Notary Public of the  
3 State of New York, was examined and testified as follows:

4 EXAMINATION BY

5 MS. GRUMET:

6 Q. Please state your name for the record.

7 A. Yvette Velazquez Bennett.

8 Q. Where do you reside?

9 A. At 1622 10th Avenue, Brooklyn, New York 11215.

10 MS. GRUMET: I just want to state for the record  
11 that this deposition is addressed to the claims raised in the  
12 Plaintiff's preliminary injunction motion and that it's deemed  
13 continuing for the purposes of the remainder of this litigation.

14 Q. I am to go going to be asking you questions this  
15 morning about your claims in this lawsuit. Have you taken a  
16 deposition before?

17 A. No.

18 Q. You are going to be answering the questions that I ask,  
19 under the oath of the court reporter. The court reporter  
20 prepares a transcript of the deposition which you will have an  
21 opportunity to review. It's important that if I ask a question  
22 that you don't understand, whether because you don't hear me or  
23 the question is unclear, let me know and I will repeat or  
24 rephrase the question.

25 A. Yes.

1           A.    It's recruiting more people to get involved in  
2   particular with the Republican Party.  As I am a Republican,  
3   recruiting people to also work poll sites helping to build a  
4   Party.  Also, when people get involved with the election process,  
5   is gets them excited and willing to do more and that's part what  
6   of I do, too.

7           Q.    And you made reference earlier to the Republican Party  
8   platform?

9           A.    Yes.

10          Q.    Is there anything in that platform that relates at that  
11   Republican campaign?

12          A.    No.

13          Q.    Did you work at the Republican national convention?

14          A.    I was a volunteer.

15          Q.    What were your responsibilities there?

16          A.    Site operations.  I worked with the secret service and  
17   security detail at the convention site.

18          Q.    And what offices have you run for?

19          A.    I ran for City Council in 2005 and in 2006 I ran for  
20   state assembly.

21          Q.    Are you currently running for office?

22          A.    Yes, for State Assembly now.

23          Q.    For 2008?

24          A.    Yes.

25          Q.    What are your claims in this litigation?

1           A.    My claims in this litigation is the way the new law or  
2   the way it's written prevents key people from donating to my  
3   campaign. It prevents adequate funding for a campaign that would  
4   be viable. There is no way that I can run against an incumbent,  
5   especially me without the proper finances for a campaign.

6           Q.    And what do you mean by "key people," when you say it  
7   prevents key people from donating to your campaign?

8           A.    People involved with the City. I have friends who work  
9   with the City. They would be unable to donate.

10          Q.    What do you mean by, "work with the City"?

11          A.    Contractors. They may have worked with the City in the  
12   past and are not currently working with the City. I don't know  
13   if I can really answer that any better.

14          Q.    What is your understanding of who is subject to lower  
15   contribution limits under the Campaign Finance Law?

16          A.    Can you clarify that?

17          Q.    What is your understanding of who may be restricted in  
18   the amount of money they can give you and the Campaign Finance  
19   Law?

20          A.    When I ran last time, I had a tough time raising money  
21   as it was my scope of potential donors. Because my experience  
22   now is greater, among those donors are people who -- let me make  
23   sure I am answering this question correctly. Can you repeat the  
24   question again?

25          Q.    The people who are involved with the City.

1           A.    I am not sure I know how to answer that beyond that.  
2   What I understand is they have contracts with the City.  It's  
3   just that my scope of potential donors has grown.  I know more  
4   neighbors now.  You walk down the street, you have people who are  
5   involved with the City.

6           Q.    How did you become involved with this litigation?

7           A.    I was called by the Chairman of the Conservative Party  
8   in Brooklyn and he explained this lawsuit to me and he indicated  
9   that they were looking for Plaintiffs.  Is that the word, the  
10   correct word?

11          Q.    Yes.

12          A.    And when we he explained it, I totally agreed with the  
13   premise.  He asked me to think about it and then he contacted Mr.  
14   Bopp's firm and Joe gave me a call and he explained the lawsuit  
15   and I was on board.  From what I remember of our conversation, he  
16   had made it clear that I was a good person to participate in this  
17   process.

18          Q.    And who is the chair of the Conservative Party?

19          A.    Jerry Kassar.

20          Q.    And did he explain why he thought that you would be a  
21   good person to be a Plaintiff in the lawsuit?

22          A.    I don't recall.

23          Q.    Do you know who is financing the lawsuit?

24          A.    I don't recall.  I remember seeing a list, but I don't  
25   recall.

1 Campaign Finance Board to at least go back to the levels that I  
2 experienced in 2005, with those restrictions. They are much more  
3 severe now. I would like to see it better than that.

4 Q. What do you mean when you say you would like to see it  
5 better than that?

6 A. I find the campaign finance rules restrictive.

7 Q. How so?

8 A. I find the filings, the detail required, to be  
9 unnecessary in my opinion. If I want to buy five dollars worth  
10 of staples, I should be able to, I believe, to do that freely.

11 Q. Do you intend to run in the 2009 election?

12 A. No.

13 Q. Why is that?

14 A. The restrictions on the campaign finance is  
15 prohibitive, too restrictive in terms of how much I can raise. I  
16 don't think I can adequately run a campaign with the small amount  
17 of money I can raise.

18 Q. Would there be an incumbent for the 2009 City Council  
19 race for your district?

20 A. I believe so, yes.

21 Q. Who would that be?

22 A. James Brennan. Sorry. Wrong race. There will be no  
23 incumbent.

24 Q. Who is James Brennan?

25 A. My current opponent. I have James Brennan on the mind.



1 Q. What has your fund-raising experience been like for  
2 your current race and, just to clarify, for the 2008 Assembly  
3 race?

4 A. We are still gearing up. I expect to have a  
5 fund-raiser in another six to eight weeks. I have some money in  
6 a kitty from my prior race and that's what I am going using to  
7 get that started.

8 Q. And just in to clarify, why will there be no incumbent  
9 for the 2009 Council race for your district?

10 A. He is term limited out.

11 Q. Who is the current incumbent?

12 A. Bill Debrazzio.

13 Q. Did you participate in public financing in the 2005  
14 election?

15 A. I did not raise enough.

16 Q. Did you seek to participate in the public financing in  
17 the 2005 election?

18 A. Yes.

19 Q. Why was that?

20 A. Five thousand dollars was not going to be enough which  
21 is what I figured I could raise at the time. To run a race, if I  
22 met that five thousand dollar threshold, I would have matched the  
23 funds and have a better chance against the incumbent.

24 Q. In your experience, does the possibility of matching  
25 funds help you in raising funds from individuals? I will

1 rephrase the question. In your experience, are individuals more  
2 likely to contribute to your campaign if they believe their funds  
3 will be matched?

4 A. Yes, in some cases.

5 Q. Why is that?

6 A. Some people think that they will be getting more bang  
7 for their contributed dollar.

8 Q. Does it help you to raise funds from people who donate;  
9 does the possibility of matching funds, in your experience, help  
10 you to raise money from individuals who cannot afford to  
11 contribute a lot of money?

12 A. Yes. Can I clarify that? It would be a small number  
13 of people.

14 Q. What do you mean by that?

15 A. Many of the people wouldn't care whether there was  
16 matching funds. They are giving me something that they think is  
17 a means of appreciating me, my campaign, whether it's matched or  
18 not. I would say a majority of people, but there are some. If  
19 there is some money being matched, they might feel their dollar  
20 is worth more, but I wouldn't say a lot of them.

21 Q. How do you go about raising funds for a campaign?

22 A. I have used fund-raisers and I did one solicitation  
23 letter.

24 Q. What kind of fund-raisers?

25 A. Usually at a restaurant or a neighborhood hall. We

1 A. Yes.

2 Q. And how did you decide who to include in the document?

3 A. My personal phonebook.

4 Q. Do you know if any of the persons on the list that's  
5 been identified as Exhibit G have business dealings with the City  
6 of New York?

7 A. I don't know.

8 Q. Do you know if any of the persons on the list that's  
9 been identified as Defendants' Exhibit G are lobbyists?

10 A. Not to my recollection.

11 Q. Who was your opponent in the 2005 election for council?

12 A. Bill Debrazzio.

13 Q. What was the outcome of the election?

14 A. I don't recall. I did not win.

15 Q. So Mr. Debrazzio won?

16 A. Yes.

17 Q. In your opinion, why did he win the election?

18 A. How much time do we have? First and foremost, he is  
19 the incumbent. He has the luxury of being able to send out lots  
20 of mailings of things that he is doing within the community. You  
21 need money to be able to counteract that. I didn't have the  
22 money to do.

23 (Whereupon, the aforementioned document was marked  
24 as Defendants' Exhibit H for identification as of this date by  
25 the Reporter.)

1 Q. Do you recognize the document that's been marked as  
2 Defendants' Exhibit H?

3 A. Yes.

4 Q. And what is that document?

5 A. It's a fund-raising letter that I wrote and sent to  
6 this list of people (indicating).

7 Q. The list of people meaning Defendants' Exhibit G?

8 A. That's correct.

9 Q. I would like to direct your attention to the second  
10 page of the document, Defendants' Exhibit H, and looking at the  
11 fourth paragraph from the bottom, beginning "most importantly,"  
12 and I am going to read that paragraph.

13 "Most importantly, all of the major players in the  
14 Party are watching to see how much money I am able to raise in  
15 the campaign to decide if they want to target me for assistance.  
16 If they do, it will make a huge difference. If they don't, I am  
17 afraid all the special interest money bill Mr. Debrazzio will  
18 spend will simply overwhelm me."

19 Did you write that paragraph?

20 A. I certainly did.

21 Q. What did you mean by "major players in the Party"?

22 A. The chairman, the executive committee, they can make  
23 recommendations for people to donate to my campaign.

24 Q. And what do you mean, they can make recommendations for  
25 people to donate?

1 A. There is only so much money that the Party has. They  
2 have to be able to give it to the campaign that can best make use  
3 of the money. My goal was to show I was a good investment and  
4 that they could trust to use their money on my campaign.

5 Q. Did the Party provide financial assistance to your  
6 campaign for City Council in 2005?

7 A. No.

8 Q. Did the Party provide assistance for your Assembly  
9 campaign in 2006, financial assistance?

10 A. Yes.

11 Q. Do you know why they provided in 2006 and not in 2005?

12 A. I believe there were two reasons. One is, even though  
13 I did not raise a lot of money for the City Council campaign, I  
14 doubled the results of the prior Republican candidates running  
15 for that seat and they were impressed.

16 Q. And has the Republican Party provided financial  
17 assistance for your current campaign for Assembly?

18 A. I expect them to.

19 Q. How much financial assistance would the Party  
20 ordinarily provide for a Council race, to your knowledge?

21 A. I don't know.

22 Q. Going back to Defendants' Exhibit H, when you referred  
23 to the special interest money Mr. Debrazzio will spend, what did  
24 you mean by that?

25 A. I am trying to think how to answer this question. I

BENNETT

17

1 really don't know how to answer that question. Give me a  
2 moment. I guess special interest money would be money from  
3 organizations that would be contrary to my own interests.

4 Q. Did Mr. Debrazzio raise more money than you did for  
5 that campaign?

6 A. Yes.

7 Q. In your view, why was Mr. Debrazzio able to raise more  
8 money than you were for the 2005 Council race?

9 A. Because he would find donors to donate in one lump sum  
10 more than I could raise for my entire campaign.

11 Q. What do you mean by that? Who was he able to find as  
12 donors?

13 A. I can't answer that question at this point. That would  
14 be public record, wouldn't it?

15 Q. Do you know whether Bill Debrazzio had support from  
16 persons who had business dealings with the City in his 2005  
17 campaign?

18 A. I don't know.

19 Q. To your knowledge, did Bill Debrazzio have support from  
20 lobbyists in his 2005 campaign?

21 A. I don't know.

22 Q. In your view, did Mr. Debrazzio's status as an  
23 incumbent help him in raising funds for the 2005 Council race?

24 A. Absolutely.

25 Q. How so?

1 A. I think I answered that question. His access to  
2 literature to send to the community.

3 Q. Did that help him in raising funds?

4 A. Yes.

5 Q. Is there any other aspect of Mr. Debrazzio's incumbency  
6 that you feel may have helped him raise funds in the 2005 Council  
7 race?

8 A. Incumbency also gives you access and visibility that I  
9 did not have.

10 Q. What do you mean by access?

11 A. He gets the press releases from community events so  
12 that he can be there. I do not.

13 (Whereupon, a short recess was taken.)

14 MS. GRUMET: Nothing further.

15 MR. LA RUE: I would like her to clarify one  
16 answer.

17 A. You asked me about special interest money and you asked  
18 me to explain special interests, to clarify. Special interest  
19 groups are groups that have used money outside of the  
20 conservative ideology in my opinion.

21 MR. LA RUE: Do you want her to do another  
22 clarification?

23 MS. GRUMET: Sure.

24 A. The other clarification is I don't know for sure if  
25 anybody that I solicited has business with the City. However,

1 one person on the list, it's possible that he may have had  
2 business with the City. I don't know for sure.

3 Q. And what kind of business with the City?

4 A. He is a contractor and he also handles real estate and  
5 I know he has bought foreclosed homes perhaps from the City. I  
6 am not sure where and then he fixes them up and resells them so I  
7 don't know for sure if he has business with the City, but it's  
8 possible.

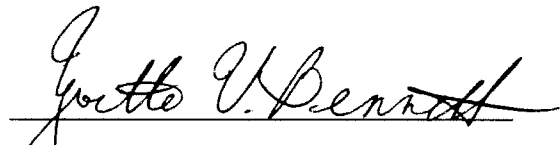
9 MS. GRUMET: Thank you. Nothing further.

10 (Whereupon, at 4:05 p.m., the Examination of this  
11 Witness was concluded.)

12

13

14

  
YVETTE VELAZQUEZ BENNETT

15

16 Subscribed and sworn to before me


17

18 this 23 day of July 2008.

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\_\_\_\_\_  
NOTARY PUBLIC

JACK STETCH  
NOTARY PUBLIC, STATE OF  
NO.02ST3841815  
QUALIFIED IN KINGS COUNTY  
COMMISSION EXPIRES SEPT. 30, 2011 

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C E R T I F I C A T E

STATE OF NEW YORK           )  
  :   SS.:  
COUNTY OF KINGS           )

I, KATE FRANCOMACARO, a Notary Public for and within  
the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set  
forth was duly sworn and that such examination is a true record  
of the testimony given by that witness.

I further certify that I am not related to any of the  
parties to this action by blood or by marriage and that I am in  
no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this  
27th day of June, 2008.

  
KATE FRANCOMACARO

# ERRATA SHEET

**Plaintiff(s):**

Tom Ognibene, et. al

**Defendant(s):**

Schwartz, et. al.

[illegible]

JACK STETCH  
NOTARY PUBLIC, STATE OF  
NO. 02ST3847815  
QUALIFIED IN KINGS COUNTY  
COMMISSION EXPIRES SEPT. 30, 2029

**DATE:**

**NAME OF WITNESS:**

Yvette Velazquez Bennett

**SIGNATURE:**

Ernest V. Bennett

Subscribed and sworn to before me  
this 23 day of July, 2008.

John Butler

**NOTARY PUBLIC**

ORIGINAL

1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X  
4 TOM OGNIENE, et al.,

5 PLAINTIFFS,

6 -against-

Case No.  
08cv013335  
(LTS) (TDK)

7 SCHWARTZ, et al.,

8 DEFENDANTS.

9 -----X

10 DATE: June 20, 2008

11 TIME: 9:22 A.M.

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EXAMINATION BEFORE TRIAL of the Plaintiff,  
SENATOR MARTIN MALAVE DILAN, taken by the Defendants,  
pursuant to a Court Order, held at the office of Special  
Federal Litigation, New York City Law Department, 100 Church  
Street, New York, New York 10007-2601, before a Notary  
Public of the State of New York.

1 A P P E A R A N C E S:

2

3

4 BOPP, COLESON & BOSTROM, ESQS.  
5 Attorneys for the Plaintiffs  
6 The National Building  
7 1 South Sixth Street  
8 Terre Haute, Indiana 47807-3510  
9 BY: JOSEPH LA RUE, ESQ.

8

9 MICHAEL A. CARDOZO, ESQ.

10 CORPORATION COUNSEL

11 NEW YORK CITY LAW DEPARTMENT

12 Attorney for the Defendants

13 100 Church Street

14 New York, New York 10007-2601

15 BY: JESSE I. LEVINE, ESQ.

16 Special Assistant Corporation Counsel

17 FILE #: 2008004838

18 CONTROL #: III0228

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1 M A R T I N M A L A V E D I L A N, called as a witness,  
2 having been first duly sworn by a Notary Public of the State  
3 of New York, was examined and testified as follows:

4 EXAMINATION BY

5 MR. LEVINE:

6 Q. Please state your name and business address for  
7 the record.

8 A. Senator Martin Malave Dilan, 786 Knickerbocker  
9 Avenue, Brooklyn, New York 11207.

10 Q. Good morning, Senator Dilan.

11 A. Good morning.

12 Q. My name is Jesse Levine. I'm an Assistant  
13 Corporation Counsel, and I'm here to ask you some questions  
14 with respect to the action you brought challenging the  
15 City's local law dealing with campaign finances.

16 A. Right.

17 Q. We're going to try to keep this short. I'm  
18 going to ask you questions only dealing with issues standing  
19 and relating to the Motion for Preliminary Injunction that  
20 you've made, your attorneys have made. And you may be  
21 deposed again down the road, but I'm not going to go into  
22 much more than what we just talked about. All right?

23 A. Okay.

24 Q. Have you ever been deposed before?

25 A. I don't recall. I don't think so.

SENATOR DILAN

1 and even, let's say, if I would file a report, and we would  
2 have 75 matchable contributions from the district, if you  
3 forgot to put in a zip code, if you forgot to put in a phone  
4 number or if they didn't put the title for occupation, the  
5 Campaign Finance Board won't validate those.

6 We would have to go back and make corrections  
7 or get more contributions, so it's very difficult to raise  
8 money within a district like that.

9 Q. So did you get any business contributions from  
10 within the district?

11 A. I would, yes, get from local businessmen, I  
12 would get contributions.

13 Q. Getting back to the litigation for a second. Do  
14 you receive support from the Rent Stabilization Association  
15 in your campaigns?

16 A. Yes, I have.

17 Q. Did your relationship with the Rent  
18 Stabilization Association play any role in your involvement  
19 in this lawsuit?

20 A. No.

21 Q. Do you know who directs the strategy in this  
22 lawsuit?

23 A. No, I don't.

24 Q. Do you control decision-making?

25 A. No.

SENATOR DILAN

1 figure, but I know that we used a firm, you know, we would  
2 have someone who would print the letter to -- we would give  
3 them the contact, they would print it and it would be sent  
4 to a mail house. It's expensive, that's all I remember.  
5 It's expensive proposition, mailings. That's where the bulk  
6 of expenditures would go.

7 Q. I assume, since you got over 80 percent of the  
8 vote, you had a broad-base of support in your community?

9 A. I would say that, yes.

10 Q. And did you have support from businesses?

11 A. For the City Council race?

12 Q. Yes.

13 A. I would say I had support from local individuals  
14 because, in the campaign finance, we were precluded from  
15 accepting money from corporations. And if their proprietors  
16 gave us a contribution, it would be a personal contribution.

17 Q. What about from unions, did you ever get any  
18 union support?

19 A. From union PACs, yes.

20 Q. Can you tell me, per election cycle, which ones  
21 you got?

22 A. I can't tell you per election cycle, but I could  
23 tell you who, generally, I would expect would contribute.  
24 It would be DC37, 32BJ, the hotel workers, UFT, CSA, 1199,  
25 to name a few.

SENATOR DILAN

1 Q. To name a few. What about the uniform --

2 A. Firefighters, yes.

3 Q. Police?

4 A. I don't know if I got, I may have gotten a  
5 contribution from them.

6 Q. Did you ever get one from the Police  
7 Lieutenants' Association?

8 A. It sounds familiar, yeah.

9 Q. Okay.

10 A. I can't recall all of them, but I know we got  
11 pretty good support from union PACs.

12 Q. In preparing for this deposition, did you review  
13 any documents?

14 A. No.

15 Q. Have you, in preparation for this deposition,  
16 reviewed the Public Disclosure Statements kept on file by  
17 the Campaign Finance Board?

18 A. No.

19 Q. Have you ever reviewed those documents?

20 A. Maybe years ago, when I was in the City Council,  
21 perhaps I have.

22 Q. So what I'm going to do is, in order to make  
23 this relatively simple, I'm going to show you, for the  
24 various cycles, ask you to take a look and indicate whether  
25 you can tell from this certain of the contributors fit the  
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SENATOR DILAN

1 A. Right.

2 Q. To your knowledge, would his contribution be  
3 prohibited under the new Campaign Finance Law, \$100?

4 A. If he's contributing, I believe my understanding  
5 is that if he's contributing as an individual, I don't think  
6 it would be precluded. Whether it would be matchable or not  
7 because he's a City Marshal, I don't know the answer to that  
8 either.

9 Q. Have you solicited campaign contributions for  
10 potential City Council running in the 2009 cycle?

11 A. I have not decided, you know, fully that I'm  
12 going to do it. I'm contemplating it. I have not filed any  
13 papers with the Campaign Finance Board, so I have not  
14 solicited any funds.

15 Q. Have you identified any businesses or lobbyists  
16 that you would target for solicitation?

17 A. You're saying, have I formulated a list?

18 Q. Yes.

19 A. Not for that purpose, no.

20 Q. Do you know of any potential contributors who  
21 would be affected by the Campaign Finance Law, in the 2009  
22 cycle?

23 A. The only thing I would say is that I know  
24 currently, with my current position, I may have a fundraiser  
25 and people who will be situated in that situation have

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SENATOR DILAN

1 A. With City agencies, yes.

2 Q. Okay.

3 A. Yeah.

4 Q. And were those dealings affected by the amount  
5 of the contribution that your constituent gave you?

6 A. No.

7 Q. Did it matter to you whether a constituent  
8 contributed or not?

9 A. No.

10 Q. Do you think that campaign contributions who  
11 have business dealings with the City influence the actions  
12 of elected officials?

13 A. I don't think that they do, but at least, you  
14 know, they have not with me.

15 Q. Have you ever heard rumors of certain other City  
16 Councilmen being affected by the contributions of people who  
17 do business with the City?

18 A. I have not had no conversations with anyone  
19 regarding that, no.

20 Q. Do you know whether there's a public perception  
21 that it's a bad thing for --

22 A. Well, I mean, I hear what advocate, you know,  
23 advocate groups may say, you know, I hear the Women League  
24 of Voters talk about it, I hear the media, the editorials,  
25 the press. From that respect, you know, I hear it all the

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SENATOR DILAN

1 time.

2 Q. Do incumbents have an advantage in obtaining  
3 contributions from people who do business with the City?

4 A. I would assume so. I hear the same thing in the  
5 media. I think incumbents have a slight advantage.

6 Q. When you were a councilman, did anybody who  
7 contributed to your campaign ask you for your help in  
8 getting business with the City?

9 A. No.

10 MR. LEVINE: Just give me one minute.  
11 Off the record.

12 MR. LA RUE: Sure.

13 (Whereupon, an off-the-record discussion  
14 was held.)

15 Q. I'm going to ask you a couple of more questions  
16 based on the declaration that you previously signed. Do you  
17 want to take a moment to take a look at this?

18 A. Okay.

19 Q. Paragraph 5 says --

20 MR. LA RUE: Excuse me, is this being  
21 entered into evidence or -- and I'm not  
22 telling you to, I just don't want to note  
23 it, if it's not.

24 MR. LEVINE: I'm going to have this  
25 deemed marked as "J", I'll get a couple of

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1 getting the democratic line in the general election is  
2 tantamount to election.

3 Q. And if you ran for City Council next year, would  
4 you expect that the democrat would get the same percentage?

5 A. Well, first you have to get past the primary.

6 Q. Right.

7 A. And if you win the primary, I would expect that,  
8 in that council district, that the same rule would apply.

9 Q. Do you know of any potential primary opponents?

10 A. I know that there have been people indicating  
11 that they plan to run, there have been people who, you know,  
12 as a leader of the district, who have even called me to say  
13 they want to sit down to talk about running for City  
14 Council, I heard names of other individuals who are  
15 considering to run, so I expect that there would be a  
16 primary.

17 Q. And again, have you made up your mind whether or  
18 not you're going to run?

19 A. I'm going to be making that decision later this  
20 year.

21 Q. Have you formed any committee to raise funds for  
22 that potential race?

23 A. Not at this time.

24 Q. I'd like you to read paragraph 7. Read that into  
25 the record, please.

SENATOR DILAN

1 MR. LA RUE: What he means is, read it  
2 out loud so that she could type it.

3 MR. LEVINE: Sorry, I forgot.

4 MR. LA RUE: That's fine.

5 A. "Because candidates are currently raising funds  
6 for the 2009 election, it is imperative that the court grant  
7 relief immediately. Every day that passes without judicial  
8 relief is another day that my First Amendment and Fourteen  
9 Amendment rights are impermissibly burdened."

10 Q. Am I correct that your previous answer is that  
11 you have not yet decided whether to run and you have not yet  
12 begun fundraising?

13 A. That's correct.

14 (Continued on next page to include  
15 jurat.)

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SENATOR DILAN

1 MR. LEVINE: I have no further questions.

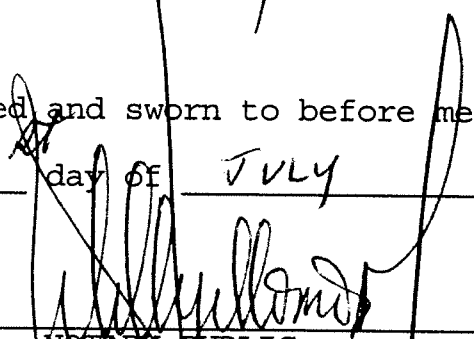
2 Thank you for your time, sir.

3 (Whereupon, the aforementioned document  
4 was marked as Defendants' Exhibit J for  
5 identification as of this date by the  
6 reporter.)

7 (Whereupon, at 10:26 a.m., the  
8 examination of this witness was concluded.)

9  
10   
11 SENATOR MARTIN MALAVE DILAN

12  
13 Subscribed and sworn to before me  
14 this 21<sup>st</sup> day of JULY, 2008.

15  
16   
17 NOTARY PUBLIC

18 VICTOR W. VILLAMAR  
19 Notary Public, State of New York  
No. 24-5001778  
Qualified in Kings County  
Commission Expires Sept. 14, 2010

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SENATOR DILAN

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C E R T I F I C A T E

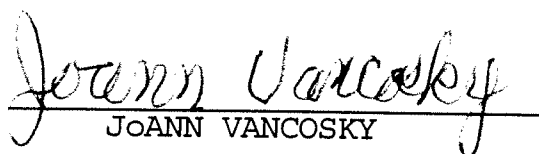
STATE OF NEW YORK            )  
  : SS.:  
COUNTY OF NASSAU            )

I, JoANN VANCOSKY, a Notary Public for and  
within the State of New York, do hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and that such  
examination is a true record of the testimony given by that  
witness.

I further certify that I am not related to any  
of the parties to this action by blood or by marriage and  
that I am in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 23rd day of June, 2008.

  
JOANN VANCOSKY

ORIGINAL

1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X  
4 TOM OGNIBENE, et al.,

5 PLAINTIFFS,

6 -against- Case No:  
7 08 CV 01335 (LTS) (TDK)

8 SCHWARZ, et al.,  
9 DEFENDANTS.

-----X

10 DATE: June 17, 2008

11 TIME: 12:41 P.M.

12

13

14 EXAMINATION BEFORE TRIAL of the Plaintiff,  
15 THOMAS V. OGNIBENE s/h/a TOM OGNIBENE, taken by the  
16 Defendant(s), pursuant to Stipulation and to the Federal  
17 Rules of Civil Procedure, held at the offices of Michael A.  
18 Cardozo, Esq., New York City Law Department, 100 Church  
19 Street, New York, New York 10007, before Cleo Shenkin, a  
20 Notary Public of the State of New York.

21

22

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1 A P P E A R A N C E S:

2

3 BOPP, COLESON & BOSTROM, ESQS.  
4 Lead Counsel for Plaintiff(s)  
5 TOM OGNIENE, et al.  
6 The National Building  
7 1 South Sixth Street  
8 Terre Haute, Indiana 47807-3510  
9 BY: JOE LA RUE, ESQ.

7

8

9 MICHAEL A. CARDOZO, ESQ.  
10 CORPORATION COUNSEL  
11 NEW YORK CITY LAW DEPARTMENT  
12 Attorney for Defendant(s)  
13 SCHWARZ, et al.  
14 100 Church Street  
15 New York, New York 10007  
16 BY: LISA GRUMET, ESQ.  
17 SENIOR COUNSEL  
18 File #: 2008004838  
19 Control #: III02244

14

15

16 ALSO PRESENT:  
17 ASHLEY COMPTON

17

18 \* \* \*

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22

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25

1 T H O M A S V. O G N I B E N E, called as a witness,  
2 having been first duly sworn by a Notary Public of the  
3 State of New York, was examined and testified as follows:

4 EXAMINATION BY

5 MS. GRUMET:

6 Q. Please state your name for the record.

7 A. Thomas V. Ognibene.

8 Q. Where do you reside?

9 A. 64-82 83rd Street, Middle Village, New York  
10 11379.

11 MS. GRUMET: To start, just for record, I  
12 wanted to make clear that this deposition is  
13 addressed to the claims raised in the plaintiff's  
14 preliminary injunction motion and is deemed  
15 continuing for the purposes of the remainder of  
16 the litigation.

17 And I also just wanted to make clear that  
18 for the purposes of the deposition, if I'm asking  
19 you questions about what you did in connection  
20 with your runs for elective office, that I will  
21 be referring to yourself and to anyone acting on  
22 your behalf.

23 THE WITNESS: Okay.

24 Q. Have you ever taken a deposition before?

25 A. Yes.

OGNIBENE

1 on the Conservative party line, in 2005, was not elected.

2 And then I ran again just recently in the special  
3 election in the 30th Council District, in 2008, and was not  
4 elected.

5 Q. And what are your claims in this litigation?

6 A. My claims in this litigation is that, although  
7 I've been an experienced candidate and run with campaign  
8 finance, under the newer laws that were passed by the City  
9 Council, after I left, that they've become more restrictive  
10 in terms of the opportunity for raising money and also for  
11 raising money that will eventually become matched by  
12 campaign finance.

13 Specifically the laws that I think make it  
14 difficult for me as a candidate are the ones that limit the  
15 opportunity to obtain campaign contribution from LLCs or  
16 LLPs, uh, and also limiting contributions from persons who  
17 either do business with the City or are part of a firm that  
18 does business with the City to \$250, and then also the fact  
19 that those contributions are not matchable, seriously  
20 impair my ability to raise funds to run for public office.

21 Q. How did you become involved with the litigation?

22 A. I was interested in running for public office and  
23 at the time that I was contacting people who had been  
24 supportive of me and they advised me, particularly people  
25 with the Rent Stabilization Association, that it was very

OGNIBENE

1 difficult for them to support me, and they went through  
2 the -- you know, a litany of explanations as to why they  
3 would have more difficulty, explaining it to me. I advised  
4 them that I thought that that was outrageous and they said  
5 that they were considering litigation at that time and  
6 would I be interested in becoming a participant in that  
7 litigation and I said certainly.

8 Q. What was the Rent Stabilization Association's  
9 position, as expressed to you, concerning the impact that  
10 the changes in the campaign finance law would have on their  
11 ability to help your campaign?

12 A. Well, they said it would seriously impair their  
13 ability to contribute, or at least assist with the matching  
14 funds, because of the stricter new rules.

15 Q. How so?

16 A. Well, obviously many of the people that own  
17 buildings do business under LLPs and LLCs, and so they  
18 could not write, uh, checks from those organizations.

19 Uh, also, there was a limitation on the amount of  
20 money that the packs could give.

21 And also, there were people that were part of  
22 that that do business with the City of New York and they  
23 wouldn't be eligible to give me funds that were matched.

24 Q. So, does the Rent Stabilization Association  
25 ordinarily collect contributions from its members?

OGNIBENE

1       A.       What they do is, they have a candidate come in  
2       and meet with their board of directors and talk to them  
3       about the issues of concern to the organization and they  
4       decide whether or not they are going to either otherwise  
5       support or endorse a candidate. If they do, they encourage  
6       their members to support the candidate financially.

7       Q.       Do they actually bundle the contributions from  
8       their members?

9       A.       Yes, on occasions they act as intermediaries.

10      Q.       And could you explain what intermediaries means?

11      A.       An intermediary is a person who will collect  
12      checks from various people and then deliver them to you and  
13      you have to identify that person with Campaign Finance.

14              In other words, if the person sent a check to you  
15      directly, you wouldn't have to, but if he gives it to a  
16      third party, the third party collects them and brings them  
17      to you, he's a bundler, or the correct terminology is  
18      "intermediary," and then when you file those checks with  
19      Campaign Finance, you have to notify them who was the  
20      person who brought the checks to you or acted as an  
21      intermediary.

22      Q.       Has the Rent Stabilization Association helped you  
23      raise funds in the past?

24      A.       Absolutely. Yes.

25      Q.       Did they help you raise funds for your 2005

OGNIBENE

1 Q. And do you know how they knew to call you?

2 A. Well, I had advised the Rent Stabilization  
3 Association that I would be a willing participant.

4 Q. Is the Rent Stabilization Association a plaintiff  
5 in this case, to your knowledge?

6 A. I, I don't think so. I don't know.

7 I don't think so. I think it's just individuals  
8 who are candidates, it's my understanding.

9 Q. Do you know why they are not participating  
10 directly in this litigation --

11 A. No.

12 Q. -- as plaintiffs?

13 What would you like to see happen as a result of  
14 this litigation?

15 A. I think that I would like to see it be a more  
16 level playing field when it comes to the ability to raise  
17 funds.

18 Certainly exempting unions is very detrimental to  
19 Republican Conservative candidates, because 99 percent, in  
20 my estimation, of union contributions go to Democratic  
21 candidates.

22 Also, the traditional organizations that fund  
23 Republican candidates I think have been seriously impacted  
24 by the new rules.

25 The only thing that I would like to see is a

OGNIBENE

1 level playing.

2 Q. Would you be challenging the law if it covered  
3 unions?

4 A. Say that --

5 Q. Would you be challenging the law if it covered  
6 unions.

7 A. I still think the limits are unfair.

8 Q. And why is that?

9 A. I can give you an example.

10 I had a person that I've known for twenty years  
11 who gave me a fifty dollar check and I was notified by  
12 Campaign Finance that she worked for the Henry Street  
13 Settlement that does business for the City and they  
14 disallowed the matching funds on it.

15 Q. And other than the concerns you raised about  
16 unions, how do you feel that the current campaign finance  
17 law is unfair to Republicans?

18 A. Because I think that, first of all, it did not --  
19 People should be allowed to support candidates  
20 that support their views and I think that, one, limiting  
21 the contributions from people who do business with the City  
22 to \$250 and not matching it really does not have a sound  
23 constitutional basis and it is unfair.

24 And someone like myself, who is an attorney, and  
25 many attorneys would have loved to have supported me, they

OGNIBENE

1 would be much more comfortable writing a check from their  
2 attorneys' account and most of them are LLPs, so that hurt  
3 me a great deal. They don't like to -- they feel more  
4 comfortable doing it that way than with personal funds.

5 Many of the real estate owners, I've been very  
6 supportive of their issues, they all own buildings as LLCs,  
7 and they can't write check from the business account.

8 I don't see why there is any reason for that.  
9 There is no rationale, from my point of view. So, you are  
10 limiting my access to a whole group of people who were  
11 supportive of my candidacy.

12 Q. Do you believe that the partnership restrictions  
13 disproportionately favor Democrats?

14 A. I, I --

15 That, I don't know.

16 Q. How about the LLC restrictions?

17 A. I couldn't give you an answer.

18 The only thing I could tell you is that it  
19 limited my access.

20 Q. How about the LLP restrictions?

21 A. Same answer.

22 Q. And how about the doing business restrictions?

23 A. Probably it affects --

24 That, that would probably be an equal effect. I  
25 don't know if there's any vantages with doing business, as



OGNIBENE

1 percent, are supportive of Democratic candidates and not  
2 supportive of Republican candidates.

3 Q. Do you intend to run in the 2009 election?

4 A. Yes, I do.

5 Q. And for what office?

6 A. City Council for the 30th Council District.

7 Q. Do you intend to participate in public financing?

8 A. I will, I will --

9 I'll be able to answer that more clearly after  
10 this litigation is settled.

11 Q. And what do you mean by that?

12 A. That if this litigation is won, I likely won't;  
13 if my litigation is lost, I would have to rethink.

14 Q. And why do you say that?

15 A. Well, because if the -- if my case is sustained,  
16 it will open up access for financing from organizations  
17 that are otherwise prevented or prohibited from  
18 contributing to me under the current law.

19 Q. Did you participate in public financing in the  
20 special election?

21 A. Yes, I did.

22 Q. And why was that?

23 A. We had a very short time frame and the ability to  
24 go out and raise funds and plan fund-raisers and do the  
25 kinds of things that are necessarily, there simply wasn't

OGNIBENE

1 A. Well, one of the things that I was able to do was  
2 go back to a list of people that had previously supported  
3 me, contacted, called, met with people. Uh, then you go  
4 and you get your lists of people and you do, you do  
5 mailings and you then phone them.

6 There's two types of list. There's a small donor  
7 list of people that you feel you can get up to fifty  
8 dollars and you have some small fund-raisers for them and  
9 then you have the major people, in which you go and sit  
10 down with and talk to them about -- on a more direct and  
11 personal level about raising funds.

12 Q. Are there any differences in how you conduct a  
13 campaign for Council or for mayor?

14 A. Actually, it's, it's --

15 The only thing that changes is the response.

16 Q. What do you mean?

17 A. Running for Council, many, many people are very  
18 supportive, because they think you have an opportunity to  
19 win and they feel comfortable with your run.

20 For mayor, it was a little more different.  
21 People were much more reluctant to donate money. Not  
22 because they didn't think that you were a decent,  
23 hardworking person, they just didn't think that it was  
24 viable, and people generally like to pick winners.

25 Q. Okay.

OGNIBENE

1 legal field.

2 Q. And are there persons who have business dealings  
3 with the City who you expect to receive increased  
4 contributions from, but for the limits?

5 A. I definitely think that there are people out  
6 there, lobbyist organizations that have interests in  
7 litigation before the City Council, issues that are raised  
8 in the City budget, that, you know, as a matter of policy,  
9 make contributions to candidates that are supportive of  
10 their position.

11 Q. Have you ever received significant support from  
12 lobbyists in past elections?

13 A. I would say yes.

14 Q. In your 2005 mayoral campaign, what portion of  
15 your contributions came from lobbyists?

16 A. Probably very little.

17 Q. In your 1997 Council race, what portion of your  
18 campaign contributions came from --

19 A. Honestly, I can't recall.

20 Q. -- lobbyist?

21 And for your earlier Council races?

22 A. I really don't...

23 Q. For your 2005 mayoral campaign, what portion of  
24 your contributions came from persons who have business  
25 dealings with the City, other than lobbyists?

OGNIBENE

1 A. I don't think that anybody in their right mind  
2 who was doing business with the City contributed to my  
3 campaign.

4 Q. Why do you say that?

5 A. I honestly don't think that anybody wants to have  
6 a problem with Michael Bloomberg.

7 Q. Do you think that people who had business  
8 dealings with the City might have been concerned that they  
9 would lose their business if they supported your campaign?

10 A. Well, I don't know if I would go that fair.

11 I think people didn't see me as particularly  
12 viable, once I didn't get the Republican party line. So,  
13 everybody waited to see if I was going to be viable, and  
14 once you lose that viability, there's just no interest in  
15 supporting your campaign.

16 Q. And why is that?

17 A. I guess the same reason that some horses run at  
18 ninety-nine to one and some go off at even. People, you  
19 know, feel much more comfortable supporting a winner and if  
20 a person doesn't have an opportunity to win, there's less  
21 of an interest in supporting them.

22 Q. Why would someone who has business dealings with  
23 the City want to support a winner?

24 A. Well, I think that everybody -- you know, in our  
25 society, everybody has an interest in having people in

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1 office and in government who have views that are similar to  
2 theirs or supportive of their ideas too. That's the whole  
3 American way. That's why social service agencies support  
4 Democratic candidates, that's why unions support Democratic  
5 candidates. And I suppose that that's why people that have  
6 interest that coincide with my views would support me.

7 Q. In your 1997 Council race, what portion of your  
8 contributions were from persons with business dealings with  
9 the City, other than lobbyists?

10 A. I can't recall that.

11 Q. In your 1997 Council race, what portion of your  
12 contributions came from LLPs, LLCs or partnerships?

13 A. I really can't recall.

14 Q. Have you ever received support from unions?

15 A. I received support in the current campaign from a  
16 union member. His union didn't endorse me, but the union  
17 member himself was supportive of me. So, the union itself  
18 didn't support me.

19 So, I would have to say no, it was an individual  
20 who supported me.

21 Q. Have any unions ever supported you?

22 A. You know, I don't think so.

23 Q. Did the Sergeants Benevolent Association help  
24 you --

25 A. I'm sorry, yes. Absolutely. I apologize. Yes,

OGNIBENE

1 the Sergeants Benevolent Association supported me.

2 Q. And what kind of support did they provide?

3 A. They called their members, uh, I think they -- I  
4 think I received financial support from them also.

5 Q. And when did they provide that support?

6 A. Right after their contract negotiations with the  
7 City stalled.

8 Q. And for which campaign?

9 A. 2005 mayoral.

10 Q. Did they support you for any other campaign?

11 A. No.

12 You know what, let me go back. Because I'm not  
13 thinking.

14 The police unions have supported me over the  
15 years, the PBA, firefighters and people like that.

16 Q. And for which campaigns?

17 A. Uh, I would think all, except the 2005 mayoral.  
18 I think in all of my Council campaigns. Most of the  
19 uniformed services were supportive of my candidacy.

20 Q. And which uniformed service supported your  
21 campaign?

22 A. PBA, uniformed fire officers, firefighters.

23 You know, uh, it's hard for me to remember.

24 I would say universally the uniformed forces were  
25 supportive.

OGNIBENE

1 they feel a much closer infinity to Democratic candidates  
2 than they do to Republican candidates.

3 Q. Are there some unions that more commonly support  
4 Republicans?

5 A. Yeah.

6 And I think it's law enforcement and uniformed  
7 services are much more willing to cross that line.

8 Q. Are there any other unions that you are aware of  
9 that more commonly support Republican candidates?

10 A. No.

11 MS. GRUMET: Do you want to take a  
12 five-minute break?

13 MR. LA RUE: Yeah, that would be fine.

14 (Whereupon, a short recess was taken.)

15 (Whereupon, Ms. Compton left the deposition  
16 room and did not return.)

17 Q. In your view, do campaign contributions by  
18 persons who have business dealings with the City ever  
19 influence the actions of elected officials?

20 A. They didn't influence mine.

21 As for other elected officials, I can't answer.

22 Q. In your view, is there a public perception that  
23 campaign contributions by persons that have business  
24 dealings with the City may influence the actions of elected  
25 officials?

OGNIBENE

1 A. Yes.

2 Q. And what is the basis for your answer?

3 A. Just, uh, you know, standing at a train station,  
4 talking to people and campaigning, as they come walking,  
5 the ones that usually throw it back in your face make a  
6 comment.

7 Q. And what do they say?

8 A. You know, "You're all a bunch of crooks."  
9 You know, people have a lot of angry things to  
10 say. So, my understanding is, just reading the papers,  
11 with the slush fund issues and that, you get a general  
12 sense that people think that people with money have a  
13 greater influence than they do.

14 Q. And what do you mean by the "slush fund issues"?

15 A. Well, that was a City Council issue in which they  
16 used nonexistent not-for-profits to park money, to be used  
17 later.

18 The City Council did that. Specifically, the  
19 speaker.

20 Q. In your view, do people who do business with the  
21 City favor incumbent officials when making contributions?

22 A. I would say that it's true of all people who  
23 contribute.

24 Q. And why do you say that?

25 A. Again, I think people feel comfortable with



OGNIBENE

1 winners and they are reluctant to back people, uh, you  
2 know, that, that they don't think can win.

3 And, you know, I experienced that in 2005, when  
4 many people said, "we love you Mr. Ognibene, but can you  
5 beat Mr. Bloomberg," and the answer was probably not.

6 But that was their rationale. When my rationale  
7 is if you vote for the person that you believe in, then,  
8 you know, you are not a loser.

9 Unfortunately, people feel more comfortable with  
10 winners. Or potential winners.

11 Q. In your view, do campaign contributions by  
12 lobbyists ever influence the campaigns of elected  
13 officials?

14 A. Influence? No.

15 Maybe allow maybe, maybe some more access.

16 Maybe. But not influence.

17 Q. And what do you mean by more access?

18 A. Well, you can't answer every phone call that  
19 comes into your office, but generally if it's somebody  
20 that's, you know, a lobbyist, generally if they call you  
21 about a specific major issue, that's -- they are probably  
22 more tuned into what's going on in government, and so you  
23 take their call. But you can't take every call that comes  
24 into your office.

25 Q. So then, in your view, do contributions by

OGNIBENE

1 lobbyists help lobbyists get access to elected officials?

2 A. You know, I'm not sure, I'm not sure.

3 And, you know, yeah, there's access. But I think  
4 it's because you think that they have a targeted issue, you  
5 know, rather than some generalized conversation.

6 People call you sometimes to talk about things  
7 that you can't change or have any influence over.  
8 Generally, when a lobbyist calls, it's about something  
9 specific that's before the City Council or legislation, so  
10 it's a call, at least it's something that you can deal with  
11 with a yes or no answer.

12 Whereas, you can't take every call from everyone,  
13 because they may be talking about things on a national  
14 level, that you can't deal with.

15 Q. What is your view of the contribution limit  
16 restrictions on lobbyist from the recent changes to the  
17 campaign finance law?

18 A. You know I, I'm kind of -- I'm not really --  
19 I understand there have to be some restrictions.  
20 You know, I don't have a problem with having limits on, on  
21 the total amount.

22 But you are talking about lobby -- lobbyists per  
23 se, rather than particular organizations that are not --

24 Q. Yes, lobbyists.

25 MR. LA RUE: Can we go off the record for

OGNIBENE

1 just a moment.

2 (Whereupon, a short recess was taken.)

3 A. So, it's different from the lobbyists, as opposed  
4 to the people who are actually doing business with the  
5 City, even though -- that's what I'm more opposed to.

6 Lobbyist, if you want to limit what a particular  
7 lobbying organization itself can contribute, I understand  
8 that.

9 Q. So, in this litigation, are you personally  
10 challenging the lower contribution limits that apply to  
11 lobbyists?

12 A. Not necessarily, no.

13 MR. LA RUE: Can we go off the record for  
14 just a minute.

15 MS. GRUMET: Sure.

16 MR. LA RUE: Let me meet with him and then  
17 you can revisit this question, if you will, and  
18 probe all you want to.

19 MS. GRUMET: Okay, can we just note, for the  
20 record, that we are taking a break, at the  
21 request of plaintiffs' counsel to speak with his  
22 client.

23 MR. LA RUE: Definitely.

24 (Whereupon, the witness and his attorney  
25 left the deposition room and returned shortly

OGNIBENE

1 specifically.

2 The answer is probably yes, there probably were  
3 some people who did. But I can't be specific about it.

4 Q. Did you solicit contributions from officials from  
5 any organizations that you had assisted in your role as a  
6 Council member?

7 A. No.

8 Q. When you were a Council member, did anyone who  
9 had contributed to your campaign ever lobby you to help  
10 them or their organizations in some way?

11 A. Yes.

12 Q. And who?

13 A. You know, I'm -- I get lobbied --

14 Probably every Council member gets lobbied every  
15 day from any -- so, you get calls for people that you have  
16 contributed to.

17 Juniper Park Civic Association wanted to have the  
18 park redone and so that's lobbying, when they come in and  
19 say we need a new ball field.

20 But I don't think anybody ever lobbied on behalf  
21 of themselves, they lobbied on behalf of the organization.

22 So, the answer is certainly, yes.

23 Q. Were you lobbied by the Rent Stabilization  
24 Association?

25 A. Oh, absolutely.

OGNIBENE

1 a decision for what other people did. I really couldn't  
2 answer that question.

3 Q. Okay.

4 What was the outcome of the special election?

5 A. Uh, Anthony Como won by thirty-nine votes over  
6 Elizabeth Crowley, and by some almost three hundred votes  
7 over me, out of approximately seventy-five hundred votes.

8 Anthony Como was the Republican organizational  
9 candidate and Elizabeth Crowley was the Democratic  
10 organizational candidate. And there was another candidate,  
11 Charles Ober, who was an insurgent Democrat.

12 And Elizabeth Crowley was ineligible for public  
13 funds, and Mr. Ober was, but I don't think he qualified.  
14 And he only received seven hundred and something votes. He  
15 finished a distant fourth.

16 Q. And do you have any opinion as to the reason for  
17 the outcome?

18 A. Probably the organizational candidates had a  
19 greater Election Day operation, in terms of being able to  
20 get out the vote, which is phone calls, ringing door bells,  
21 driving people to polls, et cetera.

22 Q. Who is Ronald Lattanzio?

23 A. Ron Lattanzio was a expeditor, who helped me  
24 raise funds. I think over the period that I knew him I  
25 raised close to two hundred thousand, over four years, and

OGNIBENE

1

2 Q. Have you spoken with any of the other plaintiffs  
3 about this litigation?

4 A. Probably briefly with Fran Reiter. But just  
5 causally, not formally.

6 I think when we signed some documents over at the  
7 Manhattan law firm (indicating), she was going in and I was  
8 coming out.

9 Q. And did you speak with anyone from the  
10 Conservative party about this litigation?

11 A. No.

12 I didn't know they were part of it. I hadn't  
13 thought about it.

14 MS. GRUMET: I have no further questions.

15 (Whereupon, at 2:00 P.M., the Examination of  
16 this Witness was concluded.)

17

18

19

  
THOMAS V. OGNIBENE

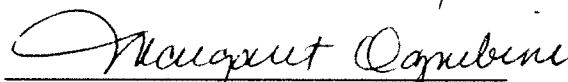
20

21 Subscribed and sworn to before me

22 this 21 day of July, 2008.

23

24

  
NOTARY PUBLIC

25

MARGARET OGNIBENE  
COMMISSIONER OF DEEDS  
NEW YORK CITY No. 4-4595  
TERM EXPIRES MARCH 1, 19

2009

OGNIBENE

C E R T I F I C A T E

STATE OF NEW YORK )  
COUNTY OF KINGS ) : SS.:

I, CLEO SHENKIN, a Notary Public for and within  
the State of New York, do hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and that such  
examination is a true record of the testimony given by that  
witness.

I further certify that I am not related to any  
of the parties to this action by blood or by marriage and  
that I am in no way interested in the outcome of this  
matter.

IN WITNESS WHEREOF, I have hereunto set my hand  
this 18th day of June, 2008.

  
CLEO SHENKIN

# Diamond Reporting, Inc. ERRATA SHEET

**Plaintiff(s):**

Ognibene, et al.

**Defendant(s):**

Schwartz, et al.

[illegible]



ORIGINAL

jsl

1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X  
4 TOM OGNIBENE, et al.,

5 PLAINTIFFS,

6 -against-

Case No:  
08 CV 01335 (LTS) (TDK)

7 SCHWARZ, et al.,

8 DEFENDANTS.  
9 -----X

10 DATE: June 17, 2008

11 TIME: 9:22 A.M.

12  
13  
14 EXAMINATION BEFORE TRIAL of the Plaintiff,  
15 ROBERT PEREZ, taken by the Defendant(s), pursuant to  
16 Stipulation and to the Federal Rules of Civil Procedure,  
17 held at the offices of Michael A. Cardozo, Esq., New York  
18 City Law Department, 100 Church Street, New York, New York  
19 10007, before Cleo Shenkin, a Notary Public of the State of  
20 New York.  
21  
22  
23  
24  
25

1 A P P E A R A N C E S:

2

3 BOPP, COLESON & BOSTROM, ESQS.  
4 Lead Counsel for Plaintiff(s)  
5 TOM OGNIENE, et al.  
6 The National Building  
7 1 South Sixth Street  
8 Terre Haute, Indiana 47807-3510  
9 BY: JOE LA RUE, ESQ.

7

8

9 DAVIDOFF MALITO & HUTCHER LLP  
10 Local Counsel for Plaintiff(s)  
11 TOM OGNIENE, et al.  
12 605 Third Avenue, 34th Floor  
13 New York, New York 10158  
14 BY: SID DAVIDOFF, ESQ.

12

13

14 MICHAEL A. CARDOZO, ESQ.  
15 CORPORATION COUNSEL  
16 NEW YORK CITY LAW DEPARTMENT  
17 Attorney for Defendant(s)  
18 SCHWARZ, et al.  
19 100 Church Street  
20 New York, New York 10007  
21 BY: JESSE I. LEVINE, ESQ.  
22 SENIOR COUNSEL  
23 File #: 2008004838  
24 Control #: III02244

19

20

21

22

\* \* \*

23

24

25

1 R O B E R T P E R E Z, called as a witness, having been  
2 first duly sworn by a Notary Public of the State of New  
3 York, was examined and testified as follows:

4 EXAMINATION BY

5 MR. LEVINE:

6 Q. Please state your name for the record.

7 A. Robert Perez.

8 Q. Where do you reside?

9 A. 118 Malba Drive, Malba, New York 11357.

10 Q. Good morning, Mr. Perez. My name is Jesse  
11 Levine. I'm an assistant corporation counsel.

12 I'm going to be asking you some questions with  
13 respect to the lawsuit of Ognibene against Schwarz, and you  
14 are a plaintiff in this case; is that correct?

15 A. Yes.

16 Q. Have you ever been deposed before in a civil  
17 action?

18 A. No.

19 Q. So, I will give you -- I'm sure your counsel has  
20 advised you how this works, but basically I'm going to be  
21 asking you questions about the allegations in your  
22 declaration and some other materials related to the motion  
23 for preliminary injunction that you filed.

24 And you may be deposed on something else down the  
25 road, but I'm going to limit it today to the PI and

PEREZ

1 like you to do this, let's work it out?

2 A. Before the job gets awarded, we have to see if we  
3 comply and we send the City official from DDC we seeing if  
4 we are going to hire minorities, black people, women or  
5 whatever you needed, and if they -- it's not approved by  
6 the City, now they go get somebody else they told you.

7 Q. Okay.

8 A. And that one is the negotiation, you keep talking  
9 to their people.

10 Q. But I'm talking about the initial bid, when you  
11 are first approved, have you ever been approved for a City  
12 contract other than by the process of a sealed competitive  
13 bid?

14 A. No.

15 Q. Okay.

16 A. No.

17 Q. Have you ever had an emergency contract from the  
18 City?

19 A. No.

20 Q. Approximately how many jobs have you had with the  
21 City over the past twenty years?

22 A. Counting the two corporations, close to \$500  
23 million.

24 Q. Very nice.

25 And that's been over the last twenty years, about

PEREZ

1 Q. -- is that right? Okay.

2 Now, you are a plaintiff in this lawsuit; is that  
3 correct?

4 A. Yes.

5 Q. How did you get involved with the lawsuit?

6 A. Talking to Mr. Davidoff, I ask him, what are we  
7 going to do with this law, because it was all over the city  
8 that the guys that bidding city work or doing city work,  
9 they can only donate \$200, or whatever the new, and I say  
10 it's against me.

11 Like you can see on the records, last year I, I  
12 giving money to Freddie Ferrer, which is Spanish like me,  
13 and I like the guy, not because he got the same religion as  
14 me, I would not put a money, or a dollar for the City  
15 Council, uh, the manager of the City Council, because it's  
16 against my religion. I am Christian Catholic and I raised  
17 in the Catholic church, she is lesbian, I cannot approve of  
18 that.

19 Q. All right.

20 Did you --

21 A. I'm sorry. I say the truth, you know, what I  
22 thinking.

23 MR. LEVINE: Of the record.

24 (Whereupon, an off-the-record discussion was  
25 held.)

PEREZ

1 Q. Did you speak with Mr. Davidoff in his capacity  
2 as your lawyer?

3 A. No.

4 As a friend.

5 Q. As a friend, okay.

6 A. As a friend.

7 Q. Does his law firm represent you?

8 A. In some cases, yes.

9 Q. Does his firm do lobbying work for you?

10 A. No.

11 He's doing -- not for me, for the corporation and  
12 the, what do you call it, the -- he's doing chasing the  
13 money, like us, like we do.

14 Q. Chasing the money is very important.

15 Does he do lobbying work for Diamond Asphalt?

16 A. Yes.

17 Q. And what about for Perez Interboro?

18 A. Years ago.

19 Q. Okay. Fair enough.

20 Now, do you believe that under the law, as you  
21 understand it, you are prevented from giving a certain  
22 amount of money, that you are limited by the terms of the  
23 new law?

24 A. For the guys that I like, the people that I like.

25 I told you the truth, I no like Obama or Hillary

PEREZ

1 (Whereupon, the aforementioned document  
2 entitled, "Declaration of Robert Perez," three  
3 pages was marked as Defendant(s)' Exhibit B for  
4 identification as of this date by the Reporter.)

5 Q. Okay, would you read to yourself paragraph two of  
6 the declaration?

7 A. (Witness complying.)

8 Q. All right?

9 A. Yes.

10 Q. And do you see it has reference to a particular  
11 section of the law in paragraph two?

12 A. Yes.

13 Q. All right, and could you tell me what section of  
14 the law paragraph two refers to?

15 A. 3-702 Paragraph 18A.

16 Q. Okay.

17 Now, I'm going to show you this page, which  
18 contains the provisions 18A, 3-702(18)(a) of the code  
19 (handing).

20 MR. LA RUE: Jesse, can I interrupt for a  
21 minute?

22 Can we stipulate that the declaration is in  
23 fact wrong?

24 John and I have talked about this. At the  
25 time that the declaration was prepared, Mr. Perez

PEREZ

1 and our law firm understood that he had business  
2 dealings with the City, where you are headed is,  
3 he does not currently meet the definition.

4 MR. LEVINE: That's correct.

5 MR. LA RUE: And rather than going through  
6 that, we are prepared to stipulate to that.

7 He does not currently meet the definition of  
8 one having business dealings with the City.

9 MR. LEVINE: That's fine.

10 Q. So, I think you have --

11 MR. LEVINE: Could you repeat the colloquy  
12 that we just had while Mr. Perez was reading.

13 (Whereupon, the referred to colloquy was  
14 read back by the Reporter.)

15 MR. LA RUE: He does not currently meet the  
16 definition of one that has business dealing with  
17 the City is what we will stipulate to.

18 Q. Do you understand the colloquy that we just had?

19 A. Yes.

20 Q. That you are not currently barred from making  
21 contributions by this law; do you agree to that?

22 A. I wish I got a copy of what you say now, because  
23 when I bid a job, I can't talk to nobody, if they know that  
24 I donate \$500 to somebody, I wish you would be their  
25 witness on my behalf.



PEREZ

1 Q. So, you are saying that the fact that you may  
2 have --

3 A. I hired a lawyer to go sue the City.

4 Q. I'm not sure we are on the same waive length  
5 right here.

6 A. I understand you.

7 Q. All right.

8 But what I'm asking you is the following, based  
9 on the fact that your lawyer has now stipulated that you  
10 are not -- your companies currently do not meet the  
11 definition of a business that has business dealings with  
12 the City, what is there that makes you believe that the law  
13 prohibits you from making contributions as you did before?

14 A. Again, it's what you guys are going to say, the  
15 corporate counsel, when we are negotiating the change  
16 order, when I ask, you say oh, you donate for so and so.

17 Q. Well, has that ever happened to you --

18 MR. LA RUE: Jesse, if I could interrupt.

19 Mr. Perez is not an attorney.

20 MR. LEVINE: I understand.

21 MR. LA RUE: We have stipulated, as his law  
22 firm, that it does not affect him. You are  
23 asking him to draw legal conclusions that he's  
24 not capable, or qualified, to draw.

25 I don't mean to be rude, but you've asked

PEREZ

1 that with John.

2 MR. LA RUE: Very good.

3 Q. Does Diamond Asphalt have a political action  
4 committee?

5 A. No.

6 Q. Did you ever consider forming one?

7 A. No.

8 Q. Do you know that political action committees can  
9 make donations that businesses themselves can't?

10 MR. DAVIDOFF: We are getting into legal  
11 interpretation.

12 MR. LA RUE: Yes, it's a legal question  
13 here.

14 MR. LEVINE: Only if he knows. I'm just  
15 asking if he knows.

16 MR. LA RUE: You can answer the question, do  
17 you know that.

18 A. You have to see, Diamond Asphalt is a very close,  
19 family corporation, we no are a General Motors or a Ford  
20 Motor Company --

21 MR. LA RUE: Mr. Perez, I'm sorry, can I  
22 interrupt you.

23 Please don't take offence to what I am about  
24 to do, but please just answer yes or no, are you  
25 aware that you can form a pack and give more --

PEREZ

1           that it wouldn't be limited is what he's  
2           asking --

3           THE WITNESS: No.

4           MR. LA RUE: Okay, he's not aware of that.

5           MR. LEVINE: Okay.

6           Q.       When you contributed to Gifford Miller, did you  
7           realize that he was running against Mr. Ferrer?

8           A.       Yes.

9           Q.       Okay, so how come you gave to both?

10          A.       I want to make it straight that Ferrer no owns me  
11          and I no own Ferrer.

12          Q.       But you gave to Miller to use against Ferrer?

13          A.       Yeah.

14          Q.       Okay.

15                   Did you ever give to the campaign of Betsy  
16          Gotbaum?

17          A.       No.

18                   I hate.

19          Q.       Okay.

20                   MR. DAVIDOFF: Off the record.

21                   (Whereupon, an off-the-record discussion was  
22                   held.)

23                   MR. LA RUE: Can we go back to that question  
24                   and will you allow me to refresh the witness's  
25                   recollection?

PEREZ

1 Albany.

2 Q. Okay.

3 And that is what allows to you negotiate  
4 separately with the utilities, rather than a sealed bid  
5 jointly with the City and the utilities; is that right?

6 A. No.

7 That one is part of the --

8 Because the problem was Con Edison, it want the  
9 City to pay their own work.

10 Q. Okay, I don't think I'm quite clear.

11 A. Okay.

12 Q. What I'm saying is, I believe you testified  
13 before that you entered into negotiated contracts with the  
14 utilities?

15 A. The utilities, yeah.

16 Q. And is that a result of your lawsuit that you can  
17 continue to do that?

18 A. No.

19 We won. Now, it's no more joint bidding.

20 Q. So, you negotiate with the utilities --

21 A. Every job you negotiate with the utilities.

22 Q. And you submit sealed bids to the City, correct?

23 A. Yeah.

24 Q. Okay.

25 Now, you indicated that if the City called you,

PEREZ

1 you would be happy to negotiate a contract with them, under  
2 what circumstances could it occur that you would do a  
3 negotiated contract?

4 A. For example, remember when the wall collapse up  
5 in the Bronx, we no got no work, it was seven contractors,  
6 they give it to a Jewish contractor, a guy that got a  
7 rabbi.

8 Q. Well, did you solicit the work?

9 A. Nobody called us.

10 Q. Was it an emergency contract?

11 A. It was an emergency contract.

12 Q. Okay.

13 Now, do you know that emergency contracts are not  
14 considered doing business with the City?

15 A. I don't know.

16 Q. Remember we looked at the definition before --

17 MR. LA RUE: He just answered the question,  
18 he doesn't know. And going beyond that, calls  
19 for legal conclusions.

20 MR. LEVINE: Well, I will ask him to read  
21 the section again.

22 I mean, unless your stipulation that he does  
23 not currently fit the definition of doing  
24 business with the City also includes emergency  
25 contracts?

PEREZ

1 MR. LA RUE: Your question was, do you know  
2 that emergency contracts don't meet the  
3 definition, he just said I don't know.

4 MR. LEVINE: Well, now I'm going to ask you,  
5 sir, does your stipulation in that he does not  
6 currently meet the definition of doing business  
7 with the City include emergency contracts?

8 MR. LA RUE: Our stipulation includes  
9 anything that would give him -- anything that  
10 would meet the definition of doing business with  
11 the City, we are willing to stipulate to he does  
12 not currently meet that definition.

13 MR. LEVINE: Okay.

14 And that includes emergency contracts?

15 MR. LA RUE: Yes. Yes.

16 MR. LEVINE: Okay, fine. That's all I  
17 wanted to know.

18 All right, give me just a couple of  
19 minutes --

20 MR. LA RUE: Sure.

21 MR. LEVINE: -- to see what we have left.

22 MR. LA RUE: Sure.

23 MR. LEVINE: He certainly is a forthcoming  
24 witness.

25 MR. LA RUE: Would you please make sure that

PEREZ

1 Q. And what kind of work does it do for you in terms  
2 of lobbying?

3 A. When they say --

4 Let's say when we got problems with the City  
5 officials, we call Sid to go and straighten them out or  
6 like go chase a payment, I don't know what he's doing.

7 Q. Okay, so do you know what he specifically does in  
8 terms of lobbying?

9 A. I explained to you, he goes chase a payment as  
10 part of the lobbying.

11 Q. So, is it fair to say that if you have problems  
12 with the City, you will ask Mr. Davidoff's firm to  
13 intercede on your behalf; is that correct?

14 A. Yeah.

15 Q. Who is your local councilman?

16 A. I don't know.

17 Q. Have you ever contributed to a candidate --

18 A. Yes.

19 Q. -- in your local council --

20 MR. DAVIDOFF: He just answered he doesn't  
21 know, so he wouldn't know if he contributed to  
22 his local council member. It would have to be to  
23 his local council member.

24 MR. LEVINE: Well, I mean to anybody --

25 MR. DAVIDOFF: How does he know if David

PEREZ

1 Q. Do you have any other lobbyists besides  
2 Mr. Davidoff's firm?

3 A. No.

4 MR. LEVINE: Okay, I have no further  
5 questions.

6 MR. LA RUE: Okay.

7 MR. LEVINE: Subject to the resolution of  
8 the issue with Mr. Pines.

9 (Whereupon, at 10:37 A.M., the Examination  
10 of this Witness was concluded.)

11

12

13

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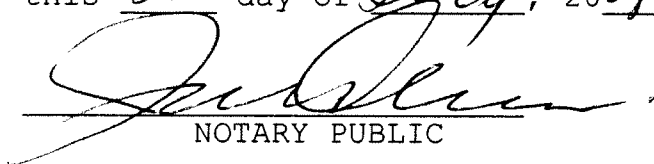
  
ROBERT PEREZ

15 Subscribed and sworn to before me

16 this 22 day of July, 2008.

17

18

  
NOTARY PUBLIC

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**J. ROBERT ALESSI**  
Notary Public, State of New York  
No. 01AL5077401  
Qualified in Nassau County  
Commission Expires 5-5-2011



C E R T I F I C A T E

Cleo Shenkin  
CLEO SHENKIN

ORIGINAL

1

YZ

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X  
4 TOM OGNIENE, et. al.,

5 PLAINIFFS,

6 -against- CA. No:  
7 08CV0335 (LTS) (TDK)

8 SCHWARTZ, et. al.,

9 DEFENDANTS  
10 -----X

11 DATE: June 19, 2008

12 TIME: 12:45 p.m.

13 DEPOSITION of the Plaintiffs, FRAN REITER, taken by the  
14 Defendants, pursuant to a Court Order and the Federal Rules of  
15 Civil Procedures, held at the offices of MICHAEL A. CARDOZO, ESQ.,  
16 Corporation Counsel, 100 Church Street, New York, New York 10007,  
17 before KATE FRANCOMACARO, a Notary Public of the State of New  
18 York.

19

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21

22

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25

1 A P P E A R A N C E S:

2

3 BOPP, COLESON & BOSTROM, ESQS.  
4 Attorneys for the Plaintiffs  
5 1 South 6th Street  
6 Terre Haute, Indiana 47807-3510  
7 BY: JOE LA RUE, ESQ.

6

7

8 MICHAEL A. CARDOZO, ESQ.  
9 CORPORATION COUNSEL  
10 Attorneys for the Defendants  
11 CITY OF NEW YORK  
12 100 Church Street  
13 New York, New York 10007  
14 BY: STEPHEN KITZINGER, ESQ.  
15 File #: 2008004838  
16 Control #: III02268

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1 F R A N R E I T E R, called as a witness, having been first  
2 duly sworn by a Notary Public of the State of New York, was  
3 examined and testified as follows:

4 EXAMINATION BY

5 MR. KITZINGER:

6 Q. Please state your name for the record.

7 A. Fran Reiter.

8 Q. Where do you reside?

9 A. At 170 Second Avenue, #3D, New York, New York 10003.

10 Q. Good morning. My name is Steve Kitzinger. I am an  
11 Assistant Corporation Counsel in the New York City Law  
12 Department. I will be here taking your deposition today  
13 concerning the lawsuit which you and a number of other people  
14 brought against the campaign finance bill. Have you ever been  
15 deposed before?

16 A. Yes.

17 Q. So you understand what a deposition is?

18 A. Yes.

19 Q. And being New Yorkers, we typically tend to start  
20 speaking before the other person stops speaking, which makes it  
21 difficult for the court reporter, so I will ask you to let me  
22 finish asking my question before you answer the question. Is  
23 that okay?

24 A. That's fine.

25 Q. Did you follow your typical daily routine today?

1 A. Yes.

2 Q. Other than NYU?

3 A. Yes.

4 Q. Which ones?

5 A. Practice Housing Initiatives is a not-for-profit  
6 organization engaged in providing supportive transitional housing  
7 to people with AIDS, and they have relationships with the  
8 department of HRA and the HRA provided transitional shelter and  
9 supportive services for AIDS patients. I have another client in  
10 the same general business. Their relationship is with the  
11 Department of Homeless Services, providing service and  
12 transitional housing to the mentally ill.

13 Q. That client is?

14 A. Sequoia Community Initiatives, NYU. I don't know that  
15 you would actually say that NYU does business with the City. NYU  
16 receives grants from the City for various things and, of course,  
17 they have a relationship with Bellevue.

18 At the moment, the 4750 Company has a contract  
19 relationship with the City of New York, with a bid. Like all  
20 bids, it allows them to assess their property owners a certain  
21 amount per square foot of real property to provide funding for a  
22 business improvement district.

23 Q. Is Solo Reality one of their clients?

24 A. They were. Not now.

25 Q. Do you know what their corporate structure was?

REITER

37

1 A. The entity that we contracted with was an LLC.

2 Q. What did you do for them?

3 A. Advising them primarily on community relations issues  
4 and some related issues around there. Solo was seeking major  
5 zoning changes via the Department of City Planning to the former  
6 water site on the East River. The project was going through the  
7 ULURP process.

8 Q. Is that around 57th Street?

9 A. No, just south of the United Nations and that's going  
10 through a process; ULURP is a legal process. There was much  
11 community opposition as to its effects when we were advising on  
12 community issues engaged in getting support for the project to  
13 counter opposition. That was primarily it.

14 Q. Did you actually engage or attempt to engage any  
15 municipal officials on their behalf with regard to this project?

16 A. I had one meeting with Daniel Graudnick on a variety of  
17 issues. The meeting was not specifically for this purpose, but  
18 we certainly did discuss this project and I recall that my  
19 partner -- this was a client that we were both working on behalf  
20 of. Sometimes we jointly represent a client. More often than  
21 not separately, but this was one where we were both playing a  
22 role. I believe we also had discussions with council member  
23 Daniel Graudnick.

24 Q. Did you did you know Mr. Graudnick prior to this point?

25 A. I didn't. My partner met and spoke with him,

REITER

38

1 certainly.

2 Q. When did these meetings occur?

3 A. I am going to guess. Sometime in January, February or  
4 early March of this year. I do not remember the date of the  
5 meeting, but it was after the first of the year and prior to the  
6 decision on the zoning, so it was somewhere in that three-month  
7 period.

8 Q. Have you ever made any contributions to the Graudnick  
9 campaign?

10 A. I believe our LLC has.

11 Q. When do you believe that occurred?

12 A. I don't recall.

13 Q. Would it have been prior to your meeting with him?

14 A. Yes.

15 Q. Significantly prior, more than a month?

16 A. I think so.

17 Q. More than six months?

18 A. I don't recall.

19 Q. Do you know whether or not your partner, Mr. Begun, has  
20 made contributions to the Graudnick campaign?

21 A. I don't know.

22 Q. Did you have any difficulty engaging Mr. Graudnick with  
23 regard to this or other issues?

24 A. No.

25 Q. How does the Campaign Finance Law affect you

REITER

41

1 part of my life. Because of what I do for a living, this law  
2 takes away from me the ability to support those candidates for  
3 public office to the extent that my neighbor can contribute more  
4 than me, and I think that does hurt me.

5 Q. Does it limit you in any way other than your ability to  
6 contribute money?

7 A. No.

8 Q. Does it limit your access to candidates in any way,  
9 shape or form?

10 A. No.

11 Q. Why is that?

12 A. Because I don't have trouble getting meetings from  
13 people. I mean, other than Mr. Doctoroff.

14 Q. The answer is, no?

15 A. The answer is, no.

16 Q. Why do you believe you do not have trouble getting  
17 meetings?

18 A. I think I am respected, well-known. I am a serious  
19 person, and when I want to meet with someone, they tend to want  
20 to meet with me.

21 Q. Do you believe the inability to contribute to a  
22 campaign, the inability to contribute money to a campaign, would  
23 limit the ability of someone less well known and less well  
24 respected to get a meeting with a candidate or candidate?

25 A. In general, no, I don't believe that. Candidates,



1 those of us who do business here in the City and represent an  
2 array of clients, get meetings as a rule because of who we are,  
3 and not because we contribute to campaigns. I don't believe  
4 that.

5 Q. Do you believe that funding campaigns gives people  
6 access to candidates or gets their voices heard to counterbalance  
7 advocacy organizations' voices?

8 A. I don't know.

9 Q. Do you understand the question?

10 A. Ask the question again.

11 Q. Let me start again. Do you believe that advocacy  
12 organizations have a good deal of access to and candidates and  
13 officials?

14 A. Yes.

15 Q. Do you believe that access is equal to or greater than  
16 a typical individual would have?

17 A. Than a typical individual? Let me make sure I  
18 understand what you are asking. Do advocacy organizations have  
19 greater access to officials than just an individual?

20 Q. Yes.

21 A. Yes, I believe that's true.

22 Q. And how would you counsel an individual to be in a  
23 better position to get access to candidates or officials to  
24 counterbalance the official if that individual wished to do so?

25 A. I don't know that I have any counsel for them.

1 at some point or another.

2 Q. Do you remember how much money the campaign had to  
3 return?

4 A. No, I don't know.

5 Q. Was it ten thousand?

6 A. No. I mean, it's in the public record. This is a  
7 well-known campaign finance case. I don't remember the details  
8 of it, but it was widely publicized at the time.

9 Q. Do you recall whether or not you conveyed the response  
10 of such individuals to the Mayor?

11 A. I am sure I didn't.

12 Q. Why are you sure you didn't?

13 A. Because I didn't have those kinds of discussions with  
14 the Mayor.

15 Q. Did you ever have discussions with the Mayor as to the  
16 identity of campaign contributors?

17 A. I don't recall discussions like that.

18 (Whereupon, a short recess was taken.)

19 Q. You are still under oath.

20 A. Yes, I understand.

21 Q. Do you believe there is a public perception that  
22 campaign contributions by lobbyists may influence, or affect  
23 their ability to influence, elected officials?

24 A. Yes.

25 Q. Do you think there is any validity to that perception?

REITER

67

1 held responsible for any obligations of Reiter, Begun?

2 A. I don't know the answer to that.

3 MR. KITZINGER: Nothing further at this time. I  
4 note this deposition was limited in scope for the purpose of  
5 responding to the Motion for Preliminary Injunction and that the  
6 deposition remains open and continuing for the purpose of the  
7 litigation in general. Do you have any questions.

8 MR. LA RUE: No.

9 (Whereupon, at 2:20 p.m., the Examination of this  
10 Witness was concluded.)

11

12

13

14

Subscribed and sworn to before me

15

this 15<sup>th</sup> day of July 2008.

16

17

Rafu  
NOTARY PUBLIC

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21

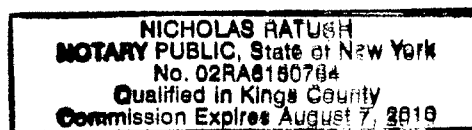
22

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FRAN REITER



REITER

69

1 C E R T I F I C A T E

2

3 STATE OF NEW YORK )

4 : SS.:

5 COUNTY OF KINGS )

6

7 I, KATE FRANCOMACARO, a Notary Public for and within  
8 the State of New York, do hereby certify:

9 That the witness whose examination is hereinbefore set  
10 forth was duly sworn and that such examination is a true record  
11 of the testimony given by that witness.

12 I further certify that I am not related to any of the  
13 parties to this action by blood or by marriage and that I am in  
14 no way interested in the outcome of this matter.

15 IN WITNESS WHEREOF, I have hereunto set my hand this  
16 27th day of June, 2008.

17

18

19

  
KATE FRANCOMACARO

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25

# Diamond Reporting, Inc.

## ERRATA SHEET

Ognibene, et al.

Schwartz, et al.

Page	Line No.	Error	Correction
7	9	"15 percent"	"50 percent". My recollection is that I was asked, "Fair to say less than 50 percent?" My answer, "Yes", was in response to that question (regarding 50 percent).
26	4	"4750 Company"	"FORTY SEVENTH FIFTH COMPANY"
36	6	"Practice Housing Initiatives"	"PRAXIS"
36	18 19	"4750 Company" and "with a bid"	"47 <sup>th</sup> STREET BID" is a different client and the one to which I was referring in my answer regarding a client with a city contract. There is no bid (as in bidding for a contract) involved.
36-37	23 +	" <del>Solo</del> Solo"	Should be spelled "Solow."
37	16, 24	"Graudnick"	Should be spelled "Garodnick"
38	8, 20, 22	"Graudnick"	" " " " "Garodnick"

**DATE:**

7/15/08

ERAN REITER

**SIGNATURE:**

Subscribed and sworn to before me  
this 15<sup>th</sup> day of July, 2008.

**NICHOLAS RATUSH**  
**NOTARY PUBLIC, State of New York**  
 No. 02RA6150764  
**NOTARY PUBLIC**  
 Kings County  
 Commission Expires August 7, 2012

ORIGINAL

1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X  
4 TOM OGNIBENE, et. al.,

5  
6 PLAINTIFFS,

7  
8 -against- CA. No:  
9 08CV0335 (LTS) (TDK)

10 SCHWARTZ, et. al.,

11  
12 DEFENDANTS  
13 -----X

14  
15 DATE: June 19, 2008

16  
17 TIME: 9:45 a.m.

18

19 DEPOSITION of the Plaintiff, MICHELE RUSSO, taken by  
20 the Defendants, pursuant to a Court Order and the Federal Rules  
21 of Civil Procedures, held at the offices of MICHAEL A. CARDOZO,  
22 ESQ., Corporation Counsel, 100 Church Street, New York, New York  
23 10007, before KATE FRANCOMACARO, a Notary Public of the State of  
24 New York.

25

1 A P P E A R A N C E S:

2

3 BOPP, COLESON & BOSTROM, ESQS.  
4 Attorneys for the Plaintiffs  
5 1 South 6th Street  
6 Terre Haute, Indiana 47807-3510  
7 BY: JOE LA RUE, ESQ.

6

7

8 MICHAEL A. CARDOZO, ESQ.  
9 CORPORATION COUNSEL  
10 Attorneys for the Defendants  
11 CITY OF NEW YORK  
12 100 Church Street  
13 New York, New York 10007  
14 BY: JONATHAN PINES, ESQ.  
15 File #: 2008004838  
16 Control #: III02268

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25

1 M I C H E L E R U S S O, called as a witness, having been  
2 first duly sworn by a Notary Public of the State of New York, was  
3 examined and testified as follows:

4 EXAMINATION BY

5 MR. PINES:

6 Q. Please state your name for the record.

7 A. Michele Russo.

8 Q. Where do you reside?

9 A. At 30A Jennifer Place, Staten Island, New York 10314.

10 Q. Good morning. My name is Jonathan Pines. I am from the  
11 New York City Law Department. We represent the Defendant in an  
12 action that you brought. Have you ever had your deposition taken  
13 in the past?

14 A. Never.

15 Q. I will tell you, this is very much like a testimony  
16 before a court. It's given under oath, so please listen very  
17 closely to the questions that I ask and answer the questions as  
18 carefully and truthfully as you can. If anything I ask you is  
19 unclear, don't hesitate to ask me to clarify. The purpose is not  
20 to trick or trap you. I am really looking for information. You  
21 can always ask to take a break. If you find your mind wanders or  
22 if you want to take a break for any reason, you are free to do  
23 so. I only ask that you answer any question that I ask you  
24 before you take that break, unless there is something that you  
25 need to talk to your lawyer about.



RUSO

4

1                   Is there any reason why you would not be able to  
2   give complete and accurate answers this morning?

3           A.    No.

4           Q.    I am talking about if you are taking an allergy  
5   medication that makes you feel drowsy.  You are perfectly ready  
6   to go?

7           A.    Yes.

8                   MR. LA RUE:  Make sure you speak your answer as  
9   opposed to nodding.

10          Q.    I always say that.  In the last two depositions I  
11   forgot.  It's very easy to do.  Where are you currently employed?

12          A.    Davidoff Malito.

13          Q.    In what position?

14          A.    I work for Mr. Davidoff as his assistant, legal  
15   secretary.

16          Q.    What's his position?

17          A.    A senior partner.

18          Q.    What sort of work does he do?

19          A.    Governmental work, legal work.

20          Q.    When you say "governmental work," what does that mean?

21          A.    Deals with government agencies.

22          Q.    Does he do lobbying work?

23          A.    Yes.

24          Q.    Do you know on whose behalf he does lobbying work?

25          A.    No.

RUSSO

5

1 Q. And Davidoff is one of the law firms bringing this  
2 litigation, right?

3 A. Yes.

4 Q. What's your current salary?

5 A. Sixty.

6 Q. Sixty Thousand?

7 A. Yes.

8 Q. You reside in Staten Island?

9 A. Yes.

10 Q. And who is your City Council representative, if you  
11 know?

12 A. I have no idea.

13 Q. Do you know your council district?

14 A. No. I live in Staten Island. I do nothing there. I  
15 work, go to the City and come home.

16 Q. I completely understand. Do you have any particular  
17 interest in any candidate on Staten Island or elsewhere in the  
18 coming New York City race in the 2009 coming cycle?

19 A. I might.

20 Q. Anyone in particular you can name?

21 A. The Staten Island Borough President.

22 Q. Do you know at this point who is running in 2009?

23 A. No.

24 Q. Do you know who will be running for the New York  
25 council district in 2009?

RUSSO

6

1 A. I have no idea.

2 Q. Nor do I.

3 A. I don't know. I don't even know what district I am in.

4 Q. Any idea who is running for mayor in 2009?

5 A. Bloomberg. That's all I know.

6 Q. You're talking about the current Mayor?

7 A. Yes.

8 Q. And how about for Comptroller, do you know who is  
9 running for controller?

10 A. No.

11 Q. And Borough President in Staten Island, I guess I asked  
12 you?

13 A. Molinari, that's the president now.

14 Q. And do you know if he is going to be running again?

15 A. No.

16 Q. How about public advocate in 2009, do you know who is  
17 running for public advocate in 2009?

18 A. No.

19 Q. Have you ever contributed to any political office in  
20 New York City for any campaign?

21 A. No.

22 Q. Why not?

23 A. I didn't have the money. I was a single parent.

24 Q. Are you still?

25 A. My children are grown. I am a grandparent.

RUSO

7

1 Q. In the 2005 campaign, did you give any money?

2 A. I wasn't in the position then to give. I may be now.

3 Q. Was your financial position different in 2005?

4 A. Sure.

5 Q. Can you explain it?

6 A. I was becoming a grandmother and giving baby showers  
7 and marrying a daughter off and paying for giving gifts and  
8 having grandchildren and buying gifts. There has been a lot of  
9 family functions. That's where the money went to, let's just  
10 say.

11 Q. And based on my knowledge, that doesn't stop?

12 A. No, it never does.

13 Q. So have you contributed to any campaigns anywhere, not  
14 only in the City, but at the federal or state level?

15 A. No.

16 Q. Do you have any idea if you are planning on  
17 contributing in the coming election cycle?

18 A. I might.

19 Q. Do you know to whom?

20 A. Probably for the Borough President, since I live there.

21 Q. Any idea, again, just ballpark, how much money you  
22 would set aside for that?

23 A. I have no idea.

24 Q. Even ballpark?

25 A. I have no idea.

RUSSO

8

1 Q. Are we talking hundreds or thousand?

2 A. Not thousand, never.

3 Q. Why would you contribute at this time and not other  
4 times?

5 A. I am more interested now in what's going on.

6 Q. What particular things are you interested in?

7 A. What goes on on the Island, the effects of what goes  
8 on, the transportation, whatever.

9 Q. Do you know what role the Borough President has in  
10 that?

11 A. No, but I am sure when you have a complaint or  
12 something, I would send something to him and I am sure he would  
13 look into something.

14 Q. Have you ever done that in the past?

15 A. Yes.

16 Q. What have you done?

17 A. We complained when they rerouted our buses. I go  
18 through Jersey and they made us go through Brooklyn and Manhattan  
19 downtown and it was a horror. It took over two hours and we  
20 called them up every day and signed petitions.

21 Q. To Molinari?

22 A. We used to call him at 7:00 at night, because we were  
23 sitting on a bridge at 7:00, on the Verrazano Bridge.

24 Q. When you say we --

25 A. The whole bus was hollering.

RUSSO

9

1 Q. Do you know the contribution limits applicable to the  
2 Borough President's office?

3 A. No.

4 Q. I just want to ask you a couple of questions about the  
5 firm. Does the firm encourage its employees to contribute to  
6 campaigns?

7 A. No.

8 Q. Has the firm ever asked you to contribute to campaigns?

9 A. No.

10 Q. Do you know if the firm has collected money from  
11 employees to contribute to campaigns?

12 A. Not that I know of.

13 Q. You are a Plaintiff in this lawsuit?

14 A. Yes.

15 Q. Why did you join the lawsuit?

16 A. I didn't -- like, because I am registered, because I  
17 work for Sid, I didn't know why I had to have a certain limit.

18 Q. How did you learn about that there was a limit?

19 A. I read about it.

20 Q. Did he talk to you about it?

21 A. No, I read the paper.

22 Q. How did you come to join the lawsuit?

23 A. I called the attorney.

24 Q. And how did you even know about which attorney to call?

25 A. I called Bopp's office.

RUSO

10

1 Q. How did you know about Bopp's office?

2 A. Because I worked for Sid.

3 Q. What is that connection?

4 A. I knew there was going to be a lawsuit on it, so I said  
5 I would be a good Plaintiff. Maybe I want to give something.  
6 When I found out I had to be registered, I didn't like it.

7 Q. What, to your knowledge, is Mr. Davidoff's relationship  
8 to Bopp, the Bopp firm? How do they know each other?

9 A. They were retained. I don't know how it was done.

10 Q. Who contacted whom? In other words, did your firm  
11 contact Mr. Bopp's firm?

12 A. Mr. Bopp was contacted, interviewed.

13 Q. How did the information get to you?

14 A. I am his secretary. I do the calling and make  
15 appointments.

16 Q. So you came to learn of it through that process?

17 A. Of course, yes.

18 Q. Did you ever talk to Mr. Davidoff about the case, about  
19 why it would be important to be involved in it anything like?

20 A. No, I just didn't like I was limited because of him.

21 Q. What did you do to get involved?

22 A. When he told me I was registered and I didn't know why  
23 and he explained it to me and I said, "Really? I want to have a  
24 right to do what I want to do."

25 Q. He did not ask you to join?

RUSSO

12

1 MR. LA RUE: Objection. It calls for a legal  
2 conclusion.

3 A. To me it was a burden because I work for him 9:00 to  
4 5:00. I don't live with him. I do what I want.

5 Q. If you can, only answer the question.  
6 How were your First Amendment rights burdened?

7 MR. LA RUE: Same objection. You can answer.

8 A. I want to do what I want to do, give what I want to  
9 give. It's my choice, not Sid's.

10 Q. And your 14th Amendment rights?

11 MR. LA RUE: Objection. You may answer.

12 A. I do what I want.

13 MR. PINES: That's it. Nothing further. Thank you  
14 very much.

15 (Whereupon, at 10:00 a.m., the Examination of this  
16 Witness was concluded.)

17

18

19

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Subscribed and sworn to before me

21

this 21<sup>st</sup> day of July 2008.

22

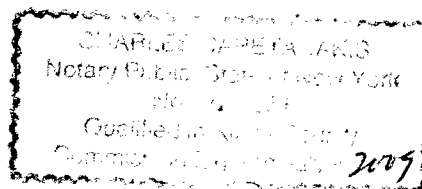
23

NOTARY PUBLIC

24

25

  
MICHELE RUSSO





RUSSO

13

## 1 C E R T I F I C A T E

2

3 STATE OF NEW YORK )

4 : SS.:

5 COUNTY OF KINGS )

6

7 I, KATE FRANCOMACARO, a Notary Public for and within  
8 the State of New York, do hereby certify:

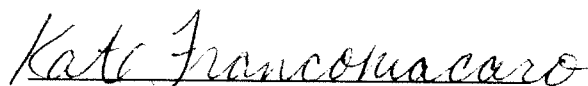
9 That the witness whose examination is hereinbefore set  
10 forth was duly sworn and that such examination is a true record  
11 of the testimony given by that witness.

12 I further certify that I am not related to any of the  
13 parties to this action by blood or by marriage and that I am in  
14 no way interested in the outcome of this matter.

15 IN WITNESS WHEREOF, I have hereunto set my hand this  
16 27th day of June, 2008.

17

18



19

KATE FRANCOMACARO

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25

ORIGINAL

1

1 UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF NEW YORK

3 -----X  
4 TOM OGNIBENE, YVETTE VELAZQUEZ BENNETT, VIVIANA  
5 VAZQUEZ-HERNANDEZ, MARTIN DILAN, MARLENE TAPPER,  
6 LEROY COMRIE, ROBERT PEREZ, FRAN REITER, SHEILA  
7 ANDERSEN-RICCI, MARTINA FRANCA ASSOCIATES, LLC,  
8 DENIS GITTENS, OSCAR PEREZ, MICHELE RUSSO,  
9 THE KINGS COUNTY COMMITTEE OF THE NEW YORK STATE  
10 CONSERVATIVE PARTY, and THE NEW YORK STATE  
11 CONSERVATIVE PARTY,

12 PLAINTIFFSs,

13 -against-

14 Case No:  
15 08cv01335  
16 (LTS) (TDK)

17 FREDERICK A.O. SCHWARZ, JR., in his  
18 official capacity as Chairman of New York  
19 City's Campaign Finance Board; DALE C.  
20 CHRISTENSEN, JR., JOSEPH P. PARKES, S.J,  
21 KATHERYN C. PATTERSON, and MARK S. PIAZZA,  
22 in their official capacities as Members of  
23 New York City's Campaign Fiance Board;  
24 MARK DAVIES, in his official capacity as  
25 Executive Director of the New York City  
Conflicts of Interest Board; MONICA BLUM,  
STEVEN ROSENFELD, ANDREW IRVING, ANGELA M.  
FREYRE, in their official capacity as  
Members of New York City's Board of  
Conflicts of Interest; and MICHAEL  
McSWEENEY, in his official capacity as  
Acting City Clerk of New York City,

DEFENDANTS.

-----X

DATE: June 18, 2008

TIME: 9:46 A.M.

(Caption continued on following page.)

1

DATE: June 18, 2008

2

TIME: 9:46 A.M.

3

4

5

EXAMINATION BEFORE TRIAL of the Plaintiff,

6

MARLENE TAPPER, taken by the Defendants, pursuant

7

to a Order and to the Federal Rules of Civil

8

Procedure, held at the offices of Michael A.

9

Cardozo, Esq., Corporation Counsel, New York City

10

Law Department, 100 Church Street, New York, New

11

York 10007-2601, before Shawn McCline, a Notary

12

Public of the State of New York.

13

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M. TAPPER

1 M A R L E N E T A P P E R, called as a  
2 witness, having been first duly sworn by a Notary  
3 Public of the State of New York, was examined and  
4 testified as follows:

5 EXAMINATION BY

6 MR. PINES:

7 Q. Would you please state your name for  
8 the record?

9 A. Marlene Tapper.

10 Q. Would you please state your address  
11 for the record?

12 A. 25-11 89th Street, East Elmhurst, New  
13 York 11369.

14 Q. Good morning, Ms. Tapper. My name is  
15 Jonathan Pines. I'm an attorney with the New York  
16 City Law Department representing the Defendants in  
17 the lawsuit that you and others have brought.

18 I just -- before I begin or as we  
19 begin, I just want to ask you, have you ever given  
20 a deposition in any other case?

21 A. Yes.

22 Q. So you're familiar with the process?

23 A. Yes.

24 Q. What was that case?

25 A. Specific?

M. TAPPER

1 A. Well, go ahead, I'm sorry.

2 Q. What occupies your time?

3 A. I ran for City Council in 2005. Upon  
4 completion of doing that my father was diagnosed  
5 with leukemia and because I was the one that  
6 wasn't currently working of the siblings and my  
7 mom would not have been able to keep executive --  
8 she works for the City of New York and she has  
9 executive level benefits, so she would not be able  
10 to keep those if she retired, so then I took on  
11 the role. I mean he was still good, but taking  
12 him to the doctor, being supportive, so that's  
13 what I did until he died.

14 Q. Understood.

15 I understand from your Declaration  
16 that you filed in this action that you are  
17 politically active; that's correct, yes?

18 A. One hundred fifty percent.

19 Q. Can you give me your political  
20 background, the various activities you've done in  
21 the political arena?

22 A. Do you want me to start from now  
23 going back?

24 Q. Sure.

25 A. First campaign was Geraldine Ferraro

M. TAPPER

1 in 1984 in high school. Last campaign just come  
2 off of was Obama as a surrogate and delegate.

3 Q. Are you still active in the Obama  
4 campaign?

5 A. No.

6 Q. Do you plan to join the campaign  
7 later?

8 A. I'm running right now for office.

9 Q. You are?

10 A. Correct.

11 Q. What position are you running for?

12 A. Assembly.

13 Q. For the State Assembly?

14 A. Correct.

15 Q. New York State?

16 A. Correct.

17 Q. We'll get to that in a moment.

18 So currently your political activity  
19 is geared toward your campaign?

20 A. Correct.

21 Q. Have you been publicly announced at  
22 this point?

23 A. No.

24 Q. Did any of the activities you did,  
25 the political activities, involve fundraising

M. TAPPER

1 require that you know whether everything is  
2 accurate, but what I will ask is that without  
3 pouring through every document, if looking through  
4 it you know that some person is missing because  
5 you simply knew they contributed, add that name,  
6 that's all.

7 I'm more interested to know not that  
8 there is any irregularity. I just wanted to know  
9 if the CFB record is missing something that you  
10 can provide me.

11 But as you'll see in the subsequent  
12 questions I ask you, it's not really critical.  
13 But as I said, I wanted to ask just to be on the  
14 safe side.

15 So let me just continue on.

16 I take it from your prior statements  
17 that in this list there are no LLPs, LLCs or  
18 partnerships?

19 A. None.

20 Q. Now, how many of the people on this  
21 list, if you could, if you know, would be people  
22 who would be identified as doing business under  
23 the current law with New York City?

24 A. None.

25 Q. So these are all individual

M. TAPPER

1 contributors who would not be prohibited under  
2 current law?

3 A. Correct.

4 Q. Did you receive contributions from  
5 any unions?

6 A. Yes.

7 Q. Can you identify those?

8 A. The Carpenters and the Steamfitters.

9 Q. Is it your position that unions  
10 should not contribute under an ideal campaign  
11 finance system?

12 A. No.

13 Q. You think they should be able to?

14 A. Right.

15 Q. Why is that?

16 A. I think everyone should be able to.  
17 I don't think one group should be allowed or  
18 another one not.

19 Q. So you think that basically all  
20 organizations and individuals should be able to  
21 give without any prohibitions?

22 A. On equal standing.

23 Q. And with no restrictions, whatsoever?

24 A. I mean, that's a blanket statement,  
25 so I can't agree to that.



M. TAPPER

1 have, I don't remember, but it was accepted.

2 Q. Right, I'm not questioning, I was  
3 just asking. Actually, I was asking because I  
4 thought there was a typo, I couldn't figure out.

5 A. Probably it's Virginia. It should be  
6 Virginia.

7 Q. How many contributions, looking over  
8 this thing, over your disclosure statement,  
9 Exhibit D, if you can give a ballpark or just look  
10 through, how many contributions exceeded \$250?

11 (Witness perusing the document.)

12 BY MR. PINES:

13 Q. Actually, the record should reflect,  
14 in fact, that you may see it, the copy that I  
15 checked, I put placed checks marks on the right  
16 side.

17 A. Not including myself, right?

18 Q. You know, we can indicate both, but?

19 A. I don't know. I don't think there is  
20 five.

21 Q. Just, again, let me just complete  
22 this for the record.

23 The check marks on the right margin  
24 were check marks that I placed in looking over  
25 this based upon my review of contributions in

M. TAPPER

1 excess of 250.

2 I'm not vouching that it's a hundred  
3 percent accurate. I might have missed one last  
4 night, but...

5 A. Where is your paralegal?

6 (Witness perusing the document.)

7 A. Seven including myself, you have  
8 seven check marks, right?

9 Q. Right. I saw seven myself and you  
10 and your family were three of them, right?

11 A. I was three.

12 Q. So you just gave -- they are three  
13 because they were given at different times, you  
14 put money in at different intervals?

15 A. Yes. Some them were loans which are  
16 not indicated on this type of report.

17 Q. They were loans then you paid them  
18 back?

19 A. Some were paid back.

20 Q. I'm sorry, forgive me, I don't really  
21 know the mechanics, how does that work?

22 A. Because when you look at this report,  
23 it doesn't give you the explanation of everything  
24 that was done. So it just gives you  
25 contributions. It doesn't let, you know, that,

M. TAPPER

1 public financing system?

2 A. Except for staff, staff can't be  
3 matched.

4 Q. Is that the reason?

5 I just had a question, I think the  
6 last contribution on the very last page, it  
7 appears, and correct me if I'm wrong, my  
8 understanding is that on the right-hand column  
9 there are dollar figures, there is a dollar  
10 figure. There are two dollar figures. There is a  
11 dollar figure and underneath that there is another  
12 one.

13 My understanding is that the one  
14 underneath is how much was qualified for matching;  
15 is that your understanding as well?

16 A. I don't know. I'm sorry, where are  
17 you reading?

18 Q. Looking at Dennis Zafrios, the last,  
19 if you know?

20 A. I don't remember.

21 Q. I'm just noting that Zafrios it looks  
22 like he gave 250 and it looks like zero was --

23 A. Oh, he is out of state. Out of state  
24 can't match.

25 Q. So the majority of your contributors,

M. TAPPER

1           though, am I correct, were basically eligible for  
2           the 4-to-1 match for contributions up to 250?

3           A.       Correct.

4           Q.       To your knowledge, is it true that if  
5           you were returning today with the same  
6           contributions from the same people, they would  
7           have been matched 6-to-1 up to \$175?

8           A.       That's what I've been told. I have  
9           not sat down and gone through the new CFB class.

10          Q.       Do you know approximately how much  
11          money you collected in your 2005 campaign?

12          A.       How much I did? No.

13          Q.       You don't remember?

14          A.       I mean, it's between 22 and 25.

15          Q.       Okay, but you qualified for the  
16          match?

17          A.       Oh, yes.

18          Q.       Which was the 21,6?

19          A.       Correct, ballpark, right.

20          Q.       Did you solicit contributions from  
21          unions or neighborhood organizations?

22          A.       Yes.

23          Q.       How did you do that?

24          A.       Unions, not neighborhood  
25          organizations.

M. TAPPER

1 statement. I don't know what that means.

2 Q. Well, I'm just asking you whether you  
3 feel that it's -- it would be preferable to have  
4 all special interests have access to candidates to  
5 contribute?

6 A. Right. Not knowing what the term  
7 special interests is defined as from you, I think  
8 that everyone should be on the same playing field.

9 Q. Okay.

10 Similar question, based on your  
11 experience as a political activist and as a  
12 politician, is there a public perception, to your  
13 knowledge, that campaign contributions by  
14 lobbyists may influence the actions of elected  
15 officials?

16 A. Yes.

17 Q. And do you think that's a good thing?

18 A. No.

19 Q. Do you believe that people who do  
20 business with the City favor incumbent officials  
21 when making contributions?

22 A. Yes.

23 Q. Do you think that's a good thing? Do  
24 you think it should be regulated in some way?

25 A. Certain regulations, yes.

M. TAPPER

1 Q. And can you describe what you think  
2 would be appropriate regulation?

3 A. At this time I'm not prepared to do  
4 that.

5 Q. What's your opinion of the fact that  
6 public funding has been increased from the ratio  
7 of 4-to-1 to 6-to-1 under the new system?

8 A. It's not implemented correctly,  
9 hasn't been, and I think it's going to be worse  
10 now.

11 Q. Why is that?

12 A. Because the finance law stipulates  
13 that if the person that you're running against out  
14 spends you, you're supposed to be moved up to  
15 5-to-1 or 6-to-1 from the 2005 race, which we're  
16 talking about.

17 Q. What do you mean 5-to-1 to 6-to-1  
18 from the 2005 race?

19 A. If they match you 4-to-1 in 2005, so  
20 if the candidate that you're running against is a  
21 Bloomberg, right, you get matched 6 to 1.

22 If it was someone who was a little  
23 bit, you know, lower scale, you get matched 5 to  
24 1, right.

25 There is no -- so there is no way to

M. TAPPER

1 prove to the Campaign Finance Board doesn't --  
2 when you make an initial call to say this person  
3 is spending A, B, C, D, E, they do not investigate  
4 to find out if it should be given 5-to-1 or 6-to-1  
5 matching based on the other candidates  
6 expenditures.

7 Q. What's the basis of your knowledge  
8 about this?

9 A. Excuse me? Personal knowledge in my  
10 campaign.

11 Q. In your campaign when?

12 A. When I ran in 2005.

13 Q. Right. But I'm asking you about the  
14 6-to-1 match currently, how do you know that they  
15 wouldn't give a 6-to-1 match?

16 A. Because the campaign finance law  
17 doesn't stipulate that they have to investigate  
18 prior to the election if it's applicable.

19 Q. But you haven't seen it applied yet;  
20 is that correct?

21 A. It wasn't applied in the 2005. It  
22 wasn't applied in the 2003 election. So even  
23 though they were being outspent 5 and 6-to-1, and  
24 the law says they would receive matching funds for  
25 5 and 6-to-1, the campaign finance law doesn't

M. TAPPER

1 provide a means for that to be done immediately.

2 Q. To your knowledge, what you're saying  
3 is that the current law does not give candidates a  
4 6-to-1 match for every dollar they receive up to  
5 \$175?

6 A. No, I can't say that because it  
7 hasn't been done yet. I'm talking about what has  
8 been done in the past.

9 Q. But I was asking you, you said --

10 A. And I said that it's probably going  
11 to be even more flawed now since it's gone up to  
12 6-to-1 for \$175.

13 Q. But you're not basing it on any  
14 knowledge of current practice under the new law;  
15 is that correct?

16 A. Well --

17 Q. Isn't that correct?

18 A. The current law hasn't been put into  
19 practice.

20 Q. Well, it was put into practice  
21 actually already in the special election --

22 A. With in --

23 Q. In Tom Ognibene's former district?

24 A. Right.

25 Q. So it was put in practice in that



M. TAPPER

1 case, but you don't have knowledge about that, how  
2 it was applied in that particular race; is that  
3 correct?

4 A. No, I didn't follow their finance.

5 Q. So you haven't seen the 6-to-1  
6 applied, you don't know anything about how the  
7 6-to-1 match it being applied under the new law?

8 A. Right. But it's under the new law.  
9 If a person is outspending you 12-to-1 or  
10 something, can you get additional funding?

11 Q. I'm not going to answer your  
12 questions, it's my role to ask questions in this  
13 deposition.

14 But I just want to know the extent of  
15 your knowledge of the 6-to-1 match.

16 What you're saying is: You haven't  
17 seen it in operation, so you're basing your  
18 statement on your experience with the prior one?

19 A. The 2005.

20 Q. That's fine.

21 Are you aware of the term  
22 "pay-to-play"?

23 A. Pay-to-play?

24 Q. Pay-to-play.

25 A. No.

M. TAPPER

1 Q. Are you aware of the concept of  
2 basically money buying access that people who want  
3 favorable treatment from legislators contribute in  
4 order to get the access they are looking for?

5 A. I have no personal knowledge.

6 Q. Okay.

7 You have no awareness of the term or  
8 the concept of pay-to-play as I've just described  
9 it?

10 A. No.

11 Q. Do you think it would be a good idea  
12 to limit the public appearance of pay-to-play, in  
13 other words, paying money to get access to elected  
14 officials?

15 A. Using your definition, because I'm  
16 not familiar with the term?

17 Q. Yes.

18 A. Yes.

19 Q. Based, again, on your experience as a  
20 political activist and Obama supporter, do you  
21 think it's a good idea to provide incentives for  
22 small contributions from individuals, for example,  
23 by using public matching funds to multiply the  
24 financial impact of individual contributions?

25 A. Could you repeat that, please?

M. TAPPER

1 Q. Sure.

2 Based on your experience as a  
3 political activist and an Obama supporter, do you  
4 think it's a good idea to incentivize small  
5 contributions from individuals, for example, by  
6 the multiplier, by the 6-to-1 match for individual  
7 contributions?

8 A. Yes, absolutely.

9 Q. How did you become involved in this  
10 litigation?

11 A. I contacted them.

12 Q. How did you learn of the litigation?

13 A. *New York Times*.

14 Q. Were you a member of the original  
15 group of Plaintiffs in the case when the case was  
16 first brought?

17 A. I don't recollect the date that the  
18 -- I don't know. I don't remember.

19 MR. LA RUE: She was. We can  
20 stipulate that she was.

21 BY MR. PINES:

22 Q. So are you saying you read about the  
23 lawsuit before the lawsuit was commenced?

24 A. I read about the...

25 Q. The lawsuit before it was commenced

M. TAPPER

1 A. I don't know. I would have to look  
2 back at the specials that went on to see if  
3 anybody was impacted.

4 Q. But what you were testifying to just  
5 previously, you were talking really about your  
6 2005 election?

7 A. Correct.

8 Q. Okay.

9 MR. PINES: I have nothing further.

10 MR. LA RUE: Very good.

11

12

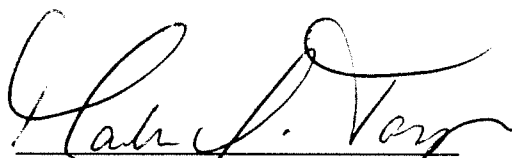
13

(Whereupon, at 11:19 a.m., the  
Examination of this Witness was concluded.)

14

15

16

  
MARLENE TAPPER

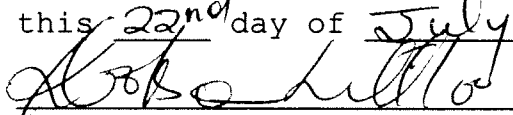
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18

19

Subscribed and sworn to before me  
this 22<sup>nd</sup> day of July, 2008.

20

  
NOTARY PUBLIC

21

22

23

24

25

KAREN A. GOLBOURNE-LITTLE  
Notary Public, State of New York  
No. 04G06179969  
Qualified in Queens County  
Commission Expires January 7, 2012

M. TAPPER

C E R T I F I C A T E


STATE OF NEW YORK           )  
                                  : SS.:  
COUNTY OF NEW YORK        )

I, SHAWN McCLINE, a Notary Public for and  
within the State of New York, do hereby certify:

That the witness whose examination is  
hereinbefore set forth was duly sworn and that  
such examination is a true record of the testimony  
given by that witness.

I further certify that I am not related to  
any of the parties to this action by blood or by  
marriage and that I am in no way interested in the  
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand this 25th day of June, 2008.

  
SHAWN McCLINE  
Registration #01MC6000688  
Commission Expires 8/24/10

ORIGINAL

1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X  
4 TOM OGNIBENE, et al.,

5 PLAINTIFFS,

6 -against-

Case No.  
08cv013335  
(LTS) (TDK)

7 SCHWARTZ, et al.,

8 DEFENDANTS.

9 -----X

10 DATE: June 20, 2008

11 TIME: 12:00 noon

12

13

14 EXAMINATION BEFORE TRIAL of the Plaintiff,  
15 VIVIANA VAZQUEZ-HERNANDEZ, taken by the Defendants, pursuant  
16 to a Court Order, held at the office of Special Federal  
17 Litigation, New York City Law Department, 100 Church Street,  
18 New York, New York 1007-2601, before JoAnn Vancosky, a  
19 Notary Public of the State of New York.

20

21

22

23

24

25

1 A P P E A R A N C E S:

2

3

4 BOPP, COLESON & BOSTROM, ESQS.  
5 Attorneys for the Plaintiffs  
6 The National Building  
7 1 South Sixth Street  
8 Terre Haute, Indiana 47807-3510  
9 BY: JOSEPH LA RUE, ESQ.

8

9 MICHAEL A. CARDOZO, ESQ.  
10 CORPORATION COUNSEL  
11 NEW YORK CITY LAW DEPARTMENT  
12 Attorney for the Defendants  
13 100 Church Street  
14 New York, New York 10007-2601  
15 BY: ANDREW J. RAUCHBERG, ESQ.

12

13 -and-  
14 JESSE I. LEVINE, ESQ.  
15 Special Assistant Corporation Counsel  
16 FILE #: 2008004838  
17 CONTROL #: III0228

15

16

17

18 ALSO PRESENT:

18

19 HILLARY WEISMAN, ESQ.  
20 Deputy General Counsel  
21 New York City Campaign Finance Board  
22 40 Rector Street, 7th Floor  
23 New York, New York 10006

21

22

23

24

\*

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25

1 V I V I A N A V A Z Q U E Z- H E R N A N D E Z, called as  
2 a witness, having been first duly sworn by a Notary Public  
3 of the State of New York, was examined and testified as  
4 follows:

5 EXAMINATION BY

6 MR. RAUCHBERG:

7 Q. Please state your name for the record.

8 A. Viviana Vazquez-Hernandez.

9 Q. Where do you reside?

10 A. 138 23rd Street, apartment 1, Brooklyn, New York  
11 11232.

12 Q. All right. Good morning.

13 A. Good morning.

14 Q. How do I pronounce your name, by the way?

15 A. Viviana Hernandez, would be fine.

16 Q. So it's Vazquez-Hernandez?

17 A. But you can say Mrs. Hernandez, if you'd like,  
18 I'm married and that's fine.

19 Q. Mrs. Hernandez, okay. I may use that, if I may.

20 A. Sure. Or Viviana would be fine.

21 Q. Very good.

22 Well, my name is Andrew Rauchberg, and I'm an  
23 attorney that represents the defendants in this matter, and  
24 in the lawsuit that you guys have brought. Have you ever  
25 had your deposition taken before?

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V. VAZQUEZ-HERNANDEZ

1 were doing business with the City of New York?

2 A. Some of the people that I solicited campaign  
3 contributions were from, I think there was one or two people  
4 from sanitation. There were other business leaders that I  
5 solicited from. At that time, I wasn't as known, so, you  
6 know, it wasn't as forthcoming as it would be now, if I were  
7 to run.

8 Q. Now, you said people, if I understood you  
9 correctly, who worked for sanitation?

10 A. Yes, worked for sanitation.

11 Q. That worked for the Sanitation Department or?

12 A. Department, um-hum.

13 Q. But not people who --

14 A. No, no.

15 Q. -- were principals in the companies who had  
16 sanitation contracts with the City?

17 A. No, no, no.

18 MR. RAUCHBERG: And then you also said,  
19 I'm sorry, the second half of that answer a  
20 little while ago was something to do with  
21 business leaders, can you read that portion  
22 back, please?

23 (Whereupon, the requested portion of the  
24 record was read back, by the reporter.)

25 A. And that was, for example, from people, business

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## V. VAZQUEZ-HERNANDEZ

1 people on like Fifth Avenue, there were some -- there was  
2 one particular individual that was part of the carpenters  
3 union and they did contribute at the end of my campaign  
4 \$1,000, to the campaign.

5 Q. Now, this was an individual who was a member of  
6 the carpenters union or the carpenters union?

7 A. He introduced me to the president of the  
8 carpenters union that he worked for, the local, and I had an  
9 interview and they endorsed me and gave me \$1,000.

10 Q. I'm going to return to that in a moment,  
11 actually. So if I understood correctly, during your 2005  
12 campaign, did you not specifically identify or distinguish  
13 individuals who you knew were doing business with the City,  
14 your approach was --

15 A. Mine was mostly grass roots.

16 Q. Okay.

17 A. Grass roots.

18 MR. RAUCHBERG: Well, let me -- could you  
19 mark this, please.

20 (Whereupon, the aforementioned document  
21 was marked as Defendants' Exhibit K for  
22 identification as of this date by the  
23 reporter.)

24 Q. So Mrs. Hernandez, actually I'll give you the  
25 official copy so your attorney can consult that one. I'm  
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V. VAZQUEZ-HERNANDEZ

1 that I don't remember his name. Anyway, he suggested, you  
2 know, some of the format and then my husband and I, my  
3 husband is a professional and he, you know, basically he and  
4 I worked together on a fundraising letter that would  
5 highlight my qualifications, my intentions, and solicit  
6 money.

7 Q. And who was the letter sent to?

8 A. The people on this list, and throughout the  
9 neighborhood and to friends and relatives.

10 Q. Did you make any other fundraising efforts, in  
11 2005?

12 A. No.

13 MR. RAUCHBERG: Can we take five minutes  
14 for a moment?

15 (Whereupon, a short break was taken.)

16 MR. RAUCHBERG: Back on the record.

17 Q. Thank you. And of course, you're still under  
18 oath.

19 A. Yes.

20 Q. Very good. So did you intend to run for City  
21 Council in 2009, at any point in time?

22 A. Not -- not now.

23 Q. Not now. But at one point in time you were  
24 considering it?

25 A. If I had the proper funding.

V. VAZQUEZ-HERNANDEZ

1 you recall what the percentage of the vote you received was?

2 A. 23 percent.

3 Q. 23 percent?

4 A. Unheard of for a Republican in a Democratic  
5 area.

6 Q. Are you aware of any businesses within your  
7 council -- well, which district did you run for in 2005?

8 A. 38th Council District.

9 Q. And within the 38th Council District, do you  
10 know of any businesses there that do business with the City,  
11 as that term is defined in the Campaign Finance Law?

12 MR. LA RUE: I'm going to object on the  
13 record that it calls for a legal conclusion  
14 under the law, but you may answer because he  
15 asked, do you know. Go ahead.

16 A. I imagine there would be.

17 Q. Do you know of any, in particular?

18 A. At the present moment, I haven't identified any.

19 Q. Let me ask you Mrs. Hernandez, then, please, do  
20 you consider yourself a politician?

21 A. A stateswoman.

22 Q. A stateswoman. Would you call yourself an  
23 activist?

24 A. Yes.

25 Q. So based on your experience, as both an activist

V. VAZQUEZ-HERNANDEZ

1 and a stateswoman, do you feel there is a public perception  
2 that campaign contributions by persons who have business  
3 dealings with the City would be likely to influence the  
4 actions of elected officials?

5 A. In certain cases, they may, but I will tell you  
6 this. When I received the funding from the carpenters  
7 union, I said I want this contribution given because you  
8 feel that I would effectively represent you, not because  
9 you're expecting any of my votes to go your way. And I put  
10 that on the line whenever I accept a contribution from  
11 anyone.

12 Others, other people's, whether illegal  
13 dealings or other motivations, shouldn't ruin it for people  
14 like myself who is honest and who wants a fair chance.

15 Q. So you make it clear to people who donate to  
16 your campaigns that that donation is not the start of some  
17 sort of a quid pro quo arrangement --

18 A. Definitely.

19 Q. -- to get them favorable treatment in the past?

20 A. Sorry. Yes.

21 Q. I'm sorry, in the future, favorable treatment in  
22 the future. Thank you.

23 So then would you agree that such -- let me  
24 say it this way. Would you agree that a perception that  
25 public officials can be influenced by donors is a bad thing?

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V. VAZQUEZ-HERNANDEZ

1 A. Definitely.

2 Q. And based on your experience, do you also think  
3 that there is a perception that campaign contributions from  
4 lobbyists might influence the actions of elected officials?

5 A. Yes.

6 Q. Do you believe that people who do business with  
7 the City favor incumbent officials when they make  
8 contributions?

9 A. Most that I've seen, yes.

10 Q. Why do you think that is?

11 A. Because they want influence. However, a person  
12 wanting influence, it shouldn't be across the board to  
13 affect other people. So there has to be checks and  
14 balances, but they have to be led out fairly.

15 Q. Do you believe that campaign contributions by  
16 lobbyists ever, in fact, influence the actions of elected  
17 officials?

18 A. I don't have personal knowledge, but I've heard  
19 in the media that it does.

20 Q. Do you have a sense of how that might happen,  
21 how that influence might be wielded or only -- I'm sorry,  
22 does that make any sense, how that influence might be  
23 wielded?

24 A. For the same reason, but that doesn't mean you  
25 throw out the baby with the bath water.

V. VAZQUEZ-HERNANDEZ

1 Q. What do you mean by that, when you say that, it  
2 doesn't mean we should throw out the baby with the bath  
3 water?

4 A. To curtail contributions or eliminate matching  
5 funds just on the basis that other people have done illegal  
6 things or wielded influence is not fair. So I'm saying,  
7 you're throwing out the baby with the bath water. You're  
8 curtailing your client, or whoever you're representing,  
9 wants to penalize everybody for the actions of, you know,  
10 those who use these campaign funding mechanisms improperly.

11 Q. Let me ask you this: Are you familiar with the  
12 term "paid to play"?

13 A. Definitely, that's, you know, quid pro quo,  
14 right.

15 Q. So your understanding of paid to play is an  
16 arrangement where -- actually, I don't want to put words  
17 into your mouth. Let's take the Latin out and tell me what  
18 you mean by quid pro quo.

19 A. If I were to -- what is it, if I were to give  
20 money to your campaign and say that you owe me and you have  
21 to legislate in my favor.

22 Q. Would you agree that it is a good idea to at  
23 least limit the fact or the appearance of pay to play in  
24 electoral politics?

25 A. Definitely.

V. VAZQUEZ-HERNANDEZ

1 \$175 at a 6-to-1 ratio; is that correct?

2 MR. LA RUE: Same objection. Please  
3 answer.

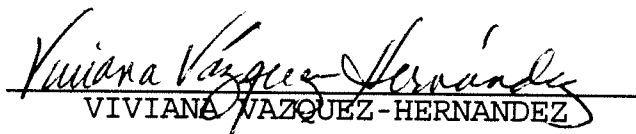
4 A. From what I understand, yes. However, I will be  
5 seeking other individuals and if the other individuals can't  
6 give up to \$2,500, they'll be, you know, limited to a lower  
7 amount, then I won't be able to get the money. I can't run  
8 a campaign on \$25,000 that's going to be effective. I need  
9 big donors and I want them to be able to donate a fair  
10 amount, not in excess, but a fair amount, and 250 or lower  
11 is not going to cut it for me. It's going to cut my legs  
12 from underneath me.

13 MR. RAUCHBERG: I have nothing further.

14 THE WITNESS: Thank you.

15 (Whereupon, at 1:43 p.m., the  
16 examination of this witness was concluded.)  
17  
18

19

  
VIVIANA VAZQUEZ-HERNANDEZ

20

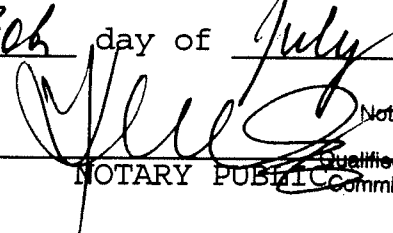
21 Subscribed and sworn to before me

22 this 30th day of July, 2008.

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JADWIGA T. KOSIAK  
Notary Public, State of New York  
No. 01K06137013  
Qualified in Richmond and Kings County  
Commission Expires Nov. 14, 2011



V. VAZQUEZ-HERNANDEZ

C E R T I F I C A T E

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STATE OF NEW YORK )

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COUNTY OF NASSAU )

: SS.:

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I, JoANN VANCOSKY, a Notary Public for and  
within the State of New York, do hereby certify:

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That the witness whose examination is  
hereinbefore set forth was duly sworn and that such  
examination is a true record of the testimony given by that  
witness.

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I further certify that I am not related to any  
of the parties to this action by blood or by marriage and  
that I am in no way interested in the outcome of this  
matter.

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JOANN VANCOSKY



07/31/2008

## Former City Councilman Leaves Politics Behind

by Ben Hogwood , Assistant Editor

Don't expect to see longtime Queens politician Tom Ognibene's name on the ballot this year. Or any other year, for that matter.

Tired of running without the support of the Queens County Republican Party, Ognibene is stepping away from politics to focus on his legal practice and dedicate more time to enjoying himself. "I'm playing a lot of golf," he said.

Without Ognibene, this leaves Republican Councilman Anthony Como without a primary challenger in the District 30 race this year. He will run against Democrat Elizabeth Crowley in November.

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Ognibene previously served as councilman for the area – which consists of Ridgewood, Woodhaven, Middle Village, Glendale and parts of Richmond Hill – but left due to term limits. In 2005, he challenged Mayor Michael Bloomberg for the city's top seat, but the mayor's camp successfully knocked him off a primary ballot. He went on to run in the race on the Conservative Party ticket, but was defeated soundly by Bloomberg.

When he reappeared this year for the special election to replace former Councilman Dennis Gallagher, he did so without the backing of the party, which instead endorsed Como.

Ognibene said that backing is essential for a successful campaign. "If you don't have that, it's very hard to win," he noted, because the party can get 200 people out on the day of the election to knock on doors and get people to the polls.

Ognibene said he and the party were first set at odds in 2001 under what he called "unfortunate circumstances that were nonsense." He was referring to a guilty plea from his former neighbor, Ronald Lattanzio, who pled guilty in 2001 to bribery and evidence tampering. During his plea, he told prosecutors he gave Ognibene bribes, including entertainment, tickets, vacation and campaign contributions, according to published reports.

In return, Ognibene supposedly assisted in obtaining variances and jobs for Lattanzio's associates.

The Manhattan district attorney investigated Ognibene, but never pressed charges.

Ognibene also felt betrayed by the party when it encouraged him to run for mayor in 2005, then endorsed Bloomberg. Ognibene said his intent in running was to send a message to the mayor that he wasn't living up to the party's ideals, even though he knew he couldn't defeat Bloomberg in the race.

In the June special election, Ognibene finished third out of a field of four, in front of Democrat Charles Ober.

County GOP Chairman Phil Ragusa said he backed Como in the race before Ognibene expressed an interest. When he found out Ognibene was staging a return, Ragusa tried to talk him out of it. "I said please don't because we'd be shooting ourselves in the foot," he said.

The absence of Ognibene and Ober, who did not seek signatures for a spot on the ballot, leaves a clear path for a rematch between Como and Crowley, who lost the special election by just 41 votes.

So far she has a huge financial advantage on Como, having raised \$14,975 to Como's \$100.

She expects the presidential race to draw out thousands more voters, especially Democrats, increasing her chance of a victory. "People are coming out to vote for president. In the special election, people I believe, had to be pulled out to vote."

She doesn't believe Como's incumbency will have a large effect on the race.

Como, meanwhile, doesn't think the race is only about money. According to him the best way to get reelected is to do the job the best he can. "Once people see the job I'm doing, campaigning is secondary," he said.

He highlighted his success in securing over \$3 million in discretionary funds for his district in the most recent city budget, despite having been in office for little more than a week. School principals, he said, are still calling him thanking him for the money he has brought in for educational needs.

He agreed the presidential race would bring out thousands more voters in November, but didn't see it hurting his chances.

"The voters of this district are very intelligent and smart people who know what they're doing. They know who the candidates are and who they're going to vote for," he said. "I don't believe for this coming election there's an opponent out there that can unseat me for this race."

Ognibene is now throwing his support behind Como and has made peace with the county party.

"I've healed all my wounds with the people of Queens," he said. "I just decided it was time to put all the anxiety and anger behind me. I decided in the interest of the party and in strengthening the party, I have to join the fold and become a productive party member."

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